FIL-PRIM' AWLA TAL-QORTI ĊIVILI
(SEDE KOSTITUZZJONALI)

Onor. Imħallef Dr. Aaron M. Bugeja M.A. (Law), LL.D. (melit)

Illum 9 ta' Jannar 2024

Fl-atti tar-rikors numru 321 tal-2023

Rikors b'talba għal rimedju ad interim li bih jiġi sospiż it-trasferiment ta' Muktar Usman lejn ir-Repubblika tal-Awstrija in segwitu għal Dublin Closure taħt ir-Regolament Dublin III pendenti d-determinazzjoni ta' proċeduri kostituzzjonali pendenti f'Malta

Muktar Usman et

vs.

L-Aġenzija għall-Protezzjoni Internazzjonali
u
It-Tribunal tal-Appelli għal Protezzjoni Internazzjonali

Il-Qorti:

Rat ir-rikors datat 15 ta' Diċembru 2023 li permezz tiegħu ir-rikorrent talab lil Qorti sabiex tagħti rimedju ad interim li permezz tiegħu tiġi sospiża l-ordni ta' trasferiment tar-rikorrent lejn ir-Repubblika tal-Awstrija meħuda in segwitu għal Dublin Closure fis-sensi tar-Regolament Dublin III pendenti d-determinazzjoni tal-proċeduri kostituzzjonali istitwiti f'Malta.

Rat ir-risposta tal-Aġenzija għall-Protezzjoni Internazzjonali u t-Tribunal tal-Appelli għal Protezzjoni Internazzjonali datata 18 ta' Diċembru 2023 li permezz tagħha wara li premettew li huma kienu qegħdin jeżegwixxu l-mandati rispettivi tagħhom skont il-Liġi, talbu lil din il-Qorti biex tiċħad it-talba tar-rikorrent in kwantu li kienu infondati, frivoli u vessatorji fis-sensi tal-Artikolu 46 tal-Kostituzzjoni ta' Malta.

Rat l-atti kollha f'dan il-proċess s'issa, inkluż id-diversi rikorsi intavolati mir-rikorrent quddiem din il-Qorti kif diversament presjeduta u l-eżitu tagħhom, kif ukoll l-atti tal-appell intavolat mir-rikorrent quddiem il-Qorti Kostituzzjonali nonche l-eżitu tiegħu, kif ukoll l-atti tal-mandat tal-inibizzjoni quddiem il-Prim'Awla tal-Qorti Ċivili numru 1802/2023DC u d-digriet relattiv datat 18 t'Ottubru 2023 li l-kunsiderazzjonijiet legali prinċipali tiegħu jidhru li kienu l-bażi tal-argumenti legali li ġew imtennija quddiem din il-Qorti fir-rikors odjern.

Semgħet it-trattazzjoni tal-partijiet matul is-seduta miżmuma appożitament fid-19 ta' Diċembru 2023;

Ikkunsidrat:

1. Il-ġurisprudenza tgħallem li dan ir-rimedju ad interim jista' jinħareġ minn din il-Qorti fejn ikun ġie pruvat li jkun hemm urġenza estrema li tali rimedju jingħata, li jkun ġie pruvat prima facie ksur ta' xi jedd tal-bniedem u fejn in-nuqqas ta' għoti ta' dak ir-rimedju jissarraf jew ikun hemm riskju imminenti ta' ħsara irrimedjabbli għal interessi vitali tar-rikorrent.

2. Il-każistika turi wkoll li inter alia, każijiet tipiċi fejn tali rimedju ad interim ikun jista' jinħareġ minn din il-Qorti huwa f'każijiet marbuta ma deportazzjoni, espulsjoni jew estradizzjoni fejn pendenti d-determinazzjoni finali tal-proċeduri appożiti tiġi ordnata s-sospensjoni tad-deportazzjoni, espulsjoni jew estradizzjoni. F'dawn il-każijiet bosta drabi l-ilmenti li jitressqu jkunu marbuta ma xi allegat ksur tal-jedd għall-ħajja taħt l-Artikolu 2 tal-Konvenzjoni Ewropea u tal-Karta tad-Drittijiet tal-Bniedem tal-Unjoni Ewropea kif ukoll f'każ ta' biża ta' tortura jew trattament inuman jew degradanti taħt l-artikolu 3 tal-Konvenzjoni Ewropea jew l-artikolu 4 tal-Karta tad-Drittijiet tal-Bniedem tal-Unjoni Ewropea. Hemm ukoll każijiet fejn, għalkemm

b'mod eċċezzjonali din il-miżura tkun kunsidrata f'każijiet marbuta mal-jedd għal smiegħ xieraq taħt l-artikolu 6 tal-Konvenzjoni Ewropea jew il-jedd għar-rispett għall-privatezza u l-ħajja familjari taħt l-artikolu 8 tal-Konvenzjoni Ewropea.

3. Fatt hu li bis-saħħa tal-artikolu 46(2) tal-Kostituzzjoni ta' Malta kif ukoll l-artikolu 4(2) tal-Kapitolu 319 tal-Liġijiet ta' Malta din il-Qorti għandha s-setgħa li tagħmel dawk l-ordnijiet, toħroġ dawk l-atti u tagħti dawk id-direttivi li tqis xierqa sabiex twettaq, jew tiżgura t-twettiq ta' kull jedd tal-bniedem jew libertà fundamentali. Dan il-jedd għal rimedju huwa miftuħ għal kull min jallega li xi waħda mid-disposizzjonijiet tal-artikoli 33 sa 45 (magħdudin) tal-Kostituzzjoni jew tal-Kapitolu 319 tal-Liġijiet ta' Malta tkun ġiet, tkun qed tiġi **jew tkun x'aktarx ser tiġi miksura dwarha**.

4. Is-setgħat mogħtija mil-Liġi lil din il-Qorti f'din il-ġurisdizzjoni ma humiex imfissra b'mod eżawrjenti f'xi Liġi partikolari. Anzi r-rimedji li tista' tiġi mitluba tagħti jitħallew fid-diskrezzjoni tagħha, fl-aħjar interess tal-ġustizzja u biex tagħmel il-ħaqq fejn meħtieġ.[1] Apparti minn hekk din il-Qorti għandha s-setgħa li tirregola l-proċedura tagħha u tagħti provvedimenti definittivi jew interlokutorji li jkunu meħtieġa li jingħataw matul is-smiegħ tal-proċeduri bil-għan li jiġi garantit li t-trattazzjoni tal-kwistjoni ssir sewwa u mingħajr pressjonijiet indebiti jew xi ħsara irriversibbli għall-partijiet.[2]

Ikkunsidrat:

5. Dan il-każ jittratta trasferiment ta' persuna rikjedenti l-ażil lejn it-territorju tar-Repubblika tal-Awstrija li kien ordnat taħt ir-Regolament tal-Unjoni Ewropea numru 604 tal-2013 (Regolament Dublin III) konsegwenti hekk imsejħa Dublin Closure.

6. Ir-Regolament Dublin III jistabbilixxi kriterji li jirregolaw il-mod kif tiġi allokata r-responsabbiltà bejn l-Istati Membri tal-Unjoni Ewropea

[1] Ara **Emanuel Camilleri vs. Spettur Louise Calleja et**, Prim'Awla tal-Qorti Ċivili (Sede Kostituzzjonali) mogħti nhar it-2 ta' Ġunju 2014.
[2] Ara wkoll **Joseph Gauci vs. Avukat Ġenerali et**, Prim'Awla tal-Qorti Ċivili (Sede Kostituzzjonali) mogħti nhar il-5 t'Ottubru 1999.

(UE) f'każ ta' talba għall-ażil.[3] Għan ewlieni tar-Regolament huwa li jindirizza l-fenomenu tal-forum shopping. Jindirizza wkoll sitwazzjonijiet fejn persuna tapplika għall-ażil, iżda ma ssib ebda Stat li jkun lest jaċċetta li jikkonsidra t-talba tagħha għalkemm ma tiġix mibgħuta lura lejn il-pajjiż tal-oriġini. Ir-Regolament Dublin III jiffaċilita proċessar rapidu għat-talbiet għall-ażil.

7. Dan ir-Regolament huwa msejjes fuq il-kunċett tal-fiduċja reċiproka in kwantu l-Istati Membri kollha tal-UE huma marbuta mis-Sistema Ewropea Komuni tal-Asil (SEKA), li tinkludi standards dwar l-akkoljenza, il-kwalifika u l-proċeduri, il-Konvenzjoni tal-1951 dwar l-Istatus tar-Refuġjati u l-Karta tad-Drittijiet Fundamentali tal-UE (Karta).

8. B'hekk l-Istat Membru li fit-territorju tiegħu jkollu persuna li tfittex l-ażil u li jagħżel li jittrasferiha lejn il-pajjiż fl-UE mnejn tkun ġiet, huwa intitolat li jippreżumi li dik il-persuna se tiġi ttrattata skont dawk l-istess standards fl-Istat Membru responsabbli. Skont ir-regolament u l-ġurisprudenza tal-Qorti tal-Ġustizzja tal-UE (QĠUE), din il-preżunzjoni tista' tiġi ribattuta jekk min ifittex l-ażil juri li t-trasferiment tiegħu taħt dan ir-Regolament ipoġġih f'riskju reali ta' trattament inuman jew degradanti kontra l-Artikolu 4 tal-Karta.

9. Din il-preżunzjoni ma tistax titqies ribattuta fil-każ fejn il-persuna li tfittex l-ażil tallega ksur ta' drittijiet fundamentali li ma jkunux tal-istess serjetà bħal dak imsemmi fl-artikolu 4 tal-Karta in kwantu l-prinċipju tal-fiduċja reċiproka jistrieħ fuq il-preżunzjoni li l-istati Membri tal-UE jipprovdu grad ta' salvagwawrdja għolja fil-protezzjoni tal-jeddijiet tal-bniedem. B'hekk huwa preżunt grad ta' sikurezza fir-rigward ta' salvagwardja kontra allegat ksur ta' jeddijiet tal-bniedem li ma jkunx laħaq dak il-livell ta' serjetà msemmi fl-artikolu 4 tal-Karta.

10. Dan l-argument huwa suġġett għal dibattiti mqanqla fid-dottrina u l-ġurisprudenza tal-UE minħabba sitwazzjonijiet partikolari dwar il-kundizzjonijiet ta' akkoljenza ta' persuni rikjedentiażil jew l-ipproċessar tat-talbiet tal-ażil fi Stati Membri. Minkejja l-impenji assunti mill-Istati Membri fir-rigward tas-SEKA nonche l-protezzjoni tal-jeddijiet tal-bniedem fil-Karta, inkluż id-dritt għall-Ażil imsemmi fl-Artikolu 18 tal-Karta, ġie meqjus li mhux kull każ ikun jimmerita li

[3] Ara wkoll l-artiklu ta' Ciara Smyth fil-European Law Journal tat-12 ta' Ġunju 2023 intitolat : The Dublin Regulation, mutual trust and fundamental rights: No exceptionality for children?

jitqies suġġett għar-risjku tat-trasferiment in bażi għall-preżunzjoni tal-fiduċja reċiproka.

11. Biss jibqa' l-fatt li d-dritt għall-Ażil huwa wieħed mill-jeddijiet tal-bniedem sanċiti fil-Karta permezz tal-Artikolu 18; daqskemm l-Artikolu 19 tal-istess Karta jipprovdi l-jedd bażiku li ħadd ma jista' jitneħħa, jitkeċċa jew jkun estradit lejn Stat fejn hemm riskju serju li jkun soġġett għall-piena tal-mewt, għat-tortura jew għal pieni jew trattamenti oħra inumani jew degradanti. Dawn iż-żewġt jeddijiet bażiċi msemmija fil-Karta allura jridu jinqraw flimkien ma dak previst fir-Regolament Dublin III. Allura jiġi bosta drabi argumentat li l-Qrati jridu jieħdu kont ta' jekk, bħala riżultat ta' trasferiment magħmul taħt dak ir-Regolament, ikunux ġew rispettati l-jeddijiet bażiċi ta' dik il-persuna rikjedenti ażil skont kif joħorġu mill-Karta. Dan peress li l-Istat Membru li fit-territorju tiegħu tkun tinstab il-persuna rikjedenti l-ażil fi Stat Membru ieħor, daqskemm huwa marbut li jsegwi u jwettaq id-disposizzjonijiet tar-Regolament Dublin III, daqstant ieħor huwa marbut li jwettaq dak preskritt fil-Karta meta jkun qiegħed jaġixxi in bażi għar-Regolament.

12. Għalhekk jiġi diversi drabi argumentat ukoll li l-Istat Membru li fit-territorju tiegħu tkun tinstab il-persuna rikjedenti ażil fi Stat Membru ieħor huwa marbut li jagħrbel u jipproċessa talbiet taħt ir-Regolament Dublin III minn lenti ta' protezzjoni tal-jeddijiet tal-bniedem skont il-Karta mhux biss għal dak li jirrigwarda l-projbizzjoni ta' tortura jew trattament inuman jew degradanti skont l-Artikolu 4 tal-Karta, iżda wkoll jekk, f'ċirkostanzi partikolari ta' każijiet speċifiċi, trasferimenti skont ir-Regolament Dublin III ikunux impediti minħabba riskji li jmorru lil hinn minn dak previst mill-Artikolu 4 tal-Karta – almenu fir-rigward ta' dak li l-persuna rikjedenti l-ażil tkun tista' taffaċċa fl-Istat Membru li lejh tkun ġiet trasferita jew lil hinn minnu. Dan jingħad ukoll, u b'mod partikolari, in kwantu r-Regolament Dublin III jippreskrivi regoli li jibnu fuq ir-Regolamenti preċedenti u li allura ġew issa jagħtu iżjed importanza lill-istatus fattwali u ġuridiku tal-persuna rikjedenti l-ażil kif ukoll ta' membri tal-familja tiegħu u qraba tiegħu.

13. Biss f'dan il-qasam tad-Dritt Ewropew, il-posizzjoni prinċipali meħuda fil-ġurisprudenza tal-QĠUE ixxaqleb iżjed lejn il-ħarsien tal-prinċipju tal-fiduċja reċiproka f'każijiet fejn ma jkunx hemm evidenza ta' ksur tal-Artikolu 4 tal-Karta, għalkemm huwa rikonoxxut ukoll li r-

Regolament Dublin III ma jistax jitqies f'vakum u b'hekk irid jittieħed ukoll fil-kuntest tad-dritt internazzjonali li fuqu ġie ispirat u msawwar. In kwantu tali, dan ir-Regolament ma jistax jiġi miftum mill-kuntest usa' li fuqu ġie mudellat. Fil-kuntest fejn il-ġurisprudenza f'dan il-kamp għadha tevolvi, inkluż dwar il-prinċipju tal-fiduċja reċiproka, ir-Regolament Dublin III irid jirrispekkja l-ħarsien tal-Artikolu 2 Trattat tal-UE, li jirrikonoxxi r-rispett għad-drittijiet tal-bniedem bħala valur fundamentali tal-Unjoni. Biss jibqa' l-fatt li l-prinċipju tar-rikonoxximent reċiproku ta' deċiżjonijiet nonche fiduċja reċiproka bejn l-Istati Membri fil-proċess deċiżjonali rispettiv huwa wieħed mogħti importanza kbira.

Ikkunsidrat

14. Saru dawn il-premessi peress li t-talbiet tar-rikorrent fir-rikors tiegħu tal-15 ta' Diċembru 2023 jridu jiġu moqrija kemm fid-dawl ta' dawk il-konsiderazzjonijiet, kif ukoll fl-isfond tat-talbiet prinċipali li qegħdin isiru fir-rikors promotur tiegħu t'indoli kostituzzjonali tat-13 ta' Ġunju 2023. Il-bażi fattwali u legali wara dan ir-rikors promotur hija pernjata fuq l-allegat ksur tal-jeddijiet tal-bniedem naxxenti minn allegati ksur tal-artikoli 4, 5 u 17 tar-Regolament Dublin III da parti tal-Aġenzija u t-Tribunal marbuta mad-determinazzjoni tat-talba għall-ażil tar-rikorrent f'Malta, liema allegat ksur ta' dan ir-Regolament qiegħed jiġi sottomess li jissarraf fi ksur tad-disposizzjonijiet tal-Karta, tal-Konvenzjoni Ewropea, nonche tal-Kostituzzjoni ta' Malta kif imsemmi fl-istess rikors.

15. Issa mingħajr ma f'dan l-istadju din il-Qorti tinvesti l-kwistjoni dwar jekk verament kienx hemm in-nuqqas ta' adeżjoni ma' dak dispost fl-artikoli 4, 5 u 17 tar-Regolament Dublin III f'dan il-każ – stante li dan semmai huwa l-meritu tat-talba fir-rikors promotur – ma jistax jiġi negat li r-riżoluzzjoni tat-talba magħmula fir-rikors tal-15 ta' Diċembru 2023 hija marbuta mal-argumenti sottomessi fir-rikors promotur. Il-kwistjonijiet marbuta ma' kemm ir-rimedju provdut fil-Liġi Maltija f'ċirkostanzi analogi huwa rimedju effettiv u effikaċi, huma kwistjonijiet li wkoll jolqtu din il-proċedura preżenti wkoll.

16. Li l-QĠEU hija lesta li fil-kuntest ta' trasferimenti taħt ir-Regolament Dublin III tqis l-importanza kbira li kull Stat Membru jimplimenta l-kelma u l-ispirtu tal-artikoli ta' dak ir-Regolament u

Liġijiet tal-UE oħra marbuta miegħu, huwa muri mill-preliminary ruling mogħti mill-istess Qorti nhar it-30 ta' Novembru 2023 – iġifieri wara li ġew deċiżi r-rikorsi kollha preċedenti magħmula f'dan il-każ - fil-każijiet konġunti numri C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21. U dato l-kunsiderazzjonijiet li l-QĠUE għamlet f'dawn il-każijiet marbuta mal-applikazzjoni għall-ażil, magħquda wkoll mal-prinċipji li l-istess Qorti stabbiliet fil-kawża C-556/21 rigward l-elementi tas-sospensjoni tat-trasferiment ta' persuna rikjedenti l-ażil pendenti proċeduri marbuta mal-istess talbiet, din il-Qorti tqis li hemm lok għal analiżi u konsiderazzjoni ulterjuri tat-talbiet tar-rikorrent fir-rikors promotur. B'hekk din il-Qorti ma taqbilx mas-sottomissjoni magħmula mill-intimati li t-talba f'dan ir-rikors hija frivola.

17. Fil-każijiet konġunti numri C-228/21, C-254/21, C-297/21, C-315/21 and C-328/21 il-QĠUE ġiet mitluba, inter alia, sabiex tiddetermina kwistjonijiet li huma rilevanti għal parti mill-ilment imressaq mir-rikorrent fir-rikors promotur tiegħu, meta r-rikorrent qiegħed jilmenta li, għalkemm formalment ingħata l-"informazzjoni lill-applikant" u formalment saritlu wkoll intervista personali, huwa jilmenta li fis-sustanza, huwa la ingħata l-informazzjoni kollha meħtieġa skont ir-Regolament Dublin III u l-anqas saritlu intervista proprja in kwantu d-deċiżjoni fil-każ tiegħu kienet diġà ttieħdet qabel din l-intervista. B'hekk huwa jilmenta li l-proċess kien wieħed vizzjat in kwantu kien biss formalita u nieqes minn kull analiżi sostantivi tal-każ tiegħu b'mod li skontu, dan jissarraf fi ksur tal-jeddijiet tal-bniedem tiegħu.

18. Issa f'dawn il-każijiet konġunti deċiżi reċentement fuq imsemmija, u b'mod partikolari b'rabta mal-każijiet numru C-228/21 u 315/21 il-kwistjoni li l-QĠUE ġiet mitluba teluċida huma s-segwenti:

> **The disputes in the main proceedings and the questions referred for a preliminary ruling**
>
> **Case C-228/21**
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> 35 CZA lodged an application for international protection in Italy. Following checks, the Italian Republic requested the Republic of Slovenia, the Member State in which CZA had previously lodged a first application for

international protection, to take back CZA pursuant to Article 18(1)(b) of the Dublin III Regulation, which was accepted on 16 April 2018.

36 CZA contested the decision to transfer him before the Tribunale di Catanzaro (District Court, Catanzaro, Italy), which annulled that decision due to failure to fulfil the obligation to provide information laid down in Article 4 of the Dublin III Regulation.

37 The Ministry of the Interior brought an appeal against that decision before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court in Case C-228/21, alleging incorrect application of Article 4 of the Dublin III Regulation.

38 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Should Article 4 of [the Dublin III Regulation] be interpreted as meaning that an action may be brought under Article 27 of [that regulation] against a transfer decision adopted by a Member State, using the mechanism provided for in Article 26 of [that regulation] and on the basis of the obligation to take back laid down in Article 18(1)(b) thereof, solely because of a failure to deliver the [common] leaflet required under Article 4(2) of [the Dublin III Regulation] by the Member State which adopted the transfer decision?

(2) Should Article 27 of [the Dublin III Regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court adopt a decision annulling the transfer decision?

(3) If the answer to Question 2 above is in the negative, should Article 27 of [the Dublin III Regulation], read in conjunction with recitals 18 and 19 and Article 4 thereof, be interpreted as meaning that, where it has been determined that there has been a failure to fulfil the obligations laid down in Article 4 [of that regulation], an effective remedy requires that the court verify the significance of that failure to fulfil obligations in the light of the circumstances alleged by the applicant and permits confirmation of the transfer decision in all cases where there are no grounds for adopting a transfer decision with different content?’

.../...

Case C-315/21

51 PP, born in Pakistan, lodged an application for international protection in Germany.

52 PP travelled to Italy, where he lodged a second application for international protection. The Italian Republic, after a check in the Eurodac database, requested the Federal Republic of Germany to take back PP pursuant to Article 18(b) of the Dublin III Regulation, which the latter Member State accepted under Article 18(1)(d) of that regulation, leading to the adoption, by the Italian Republic, of a transfer decision.

53 PP sought the annulment of that transfer decision before the Tribunale di Milano (District Court, Milan, Italy), which is the referring court in Case C-315/21, first, for infringement of his right to information laid down in Article 4 of the Dublin III Regulation, and, second, on the ground that that decision unlawfully places him at risk of 'indirect refoulement' by the Federal Republic of Germany to Pakistan.

54 The Ministry of the Interior disputes the merits of those claims. First, it contends that it adduced evidence that a personal interview as referred to in Article 5 of the Dublin III Regulation has taken place and, second, it claims that it follows from the case-law of the Corte suprema di cassazione (Supreme Court of Cassation) that the referring court in that case does not have jurisdiction to find formal irregularities relating to non-compliance with the Dublin III Regulation or to enter into the merits of PP's situation, since that is a matter for the Member State already deemed to be responsible, namely the Federal Republic of Germany. In addition, the failure to comply with Article 4 of the Dublin III Regulation is not sufficient to render invalid the transfer decision to which PP is subject, in the absence of any specific infringement of the latter's rights.

.../...

56 In those circumstances, the Tribunale di Milano (District Court, Milan) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 4 and 5 of [the Dublin III Regulation] be interpreted as meaning that infringement thereof in itself renders unlawful a decision challenged under Article 27 of [that regulation], irrespective of the specific consequences of that infringement for the content of the decision and the identification of the Member State responsible?

(2) Must Article 27 of [the Dublin III Regulation], read in conjunction with Article 18(1)(a) or with Articles 18([1])(b) [to] (d) and with Article 20(5) of [that regulation], be interpreted as identifying different subjects of appeal, different complaints to be raised in judicial proceedings and different aspects of infringement of the obligations to provide information and conduct a personal interview under Articles 4 and 5 of [that regulation]?

.../...

19. Dwar dawn il-kwesiti, il-QĠUE iddisponiet is-segwenti:

128 Consequently, the answer to the questions referred in Cases C-228/21 and C-328/21 and to the first two questions referred in Case C-315/21 is that:

– Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation must be interpreted as meaning that the obligation to provide

the information referred to therein, in particular the common leaflet – a model of which is set out in Annex X to Regulation No 1560/2003 – applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation;

– Article 5 of the Dublin III Regulation must be interpreted as meaning that the obligation to hold the personal interview referred to therein applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation;

– EU law, in particular Articles 5 and 27 of the Dublin III Regulation, must be interpreted as meaning that, without prejudice to Article 5(2) of that regulation, the transfer decision must, following an appeal brought against that decision under Article 27 of that regulation calling into question the absence of the personal interview provided for in that Article 5, be annulled unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all of his or her arguments against that decision in a hearing which complies with the conditions and safeguards laid down in that article, and those arguments are not capable of altering that decision;

– EU law, in particular Articles 4 and 27 of the Dublin III Regulation and Article 29(1)(b) of the Eurodac Regulation, must be interpreted as meaning that, where the personal interview under Article 5 of the Dublin III Regulation has taken place but the common leaflet which must be provided to the person concerned pursuant to the obligation to provide information laid down in Article 4 of the Dublin III Regulation or in Article 29(1)(b) of the Eurodac Regulation has not been provided, the national court responsible for assessing the lawfulness of the transfer decision may order that that decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact that the personal interview has taken place, actually deprived that person of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.[4]

[4] U dan wara li qieset is-segwenti:

Consideration of the questions referred for a preliminary ruling

68 The requests for a preliminary ruling have been made in the context of disputes relating to the lawfulness of transfer decisions taken by the Ministry of the Interior pursuant to the national provisions implementing Article 26(1) of the Dublin III Regulation.

69 In all the cases in the main proceedings, the transfer decisions were adopted in respect of the persons concerned not for the requested Member State to take charge of them pursuant to Article 18(1)(a) of the Dublin III Regulation, but for that Member State to take back those persons pursuant to Article 18(1)(b) or (d) of that regulation, as appropriate.

70 Depending on the main proceedings, either one or the other or both of the following issues are raised.

71 The first issue, in Cases C-228/21, C-315/21 and C-328/21, concerns the right to information, under Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation, and the conduct of the personal interview referred to in Article 5 of the Dublin III Regulation. Specifically, it concerns the consequences to be drawn, as regards the lawfulness of the transfer decision, from the failure to provide the common leaflet referred to in Article 4(2) of the Dublin III Regulation and Article 29(3) of the Eurodac Regulation, and from the failure to conduct the personal interview provided for in Article 5 of the Dublin III Regulation.

72 The second issue, in Cases C-254/21, C-297/21 and C-315/21, concerns the taking into consideration, by the court responsible for examining the lawfulness of the transfer decision, of the risk associated with any 'indirect refoulement' of the person concerned and, accordingly, with the risk of infringement of the principle of non-refoulement by the Member State responsible.

The questions in Cases C-228/21 and C-328/21 and the first two questions in Case C-315/21

73 By those questions, which it is appropriate to examine together, the referring courts in Cases C-228/21, C-315/21 and C-328/21 ask, in essence, whether the Dublin III Regulation, in particular Articles 4, 5 and 27, and the Eurodac Regulation, in particular Article 29, must be interpreted as meaning that the failure to provide the common leaflet and/or the failure to conduct a personal interview under those provisions render invalid the transfer decision adopted in the context of a procedure to take back a person under Article 23(1) or Article 24(1) of the Dublin III Regulation, irrespective of the actual consequences of the abovementioned failures on the content of that transfer decision and on the determination of the Member State responsible.

74 It is against this background that we must examine the respective scope of the right to information and the right to a personal interview, and then the consequences ensuing from an infringement thereof.

The right to information (Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation)

75 It should be noted at the outset that the cases in the main proceedings concern transfer decisions adopted in the context not of take charge procedures under Article 21 of the Dublin III Regulation, but of take back procedures for persons referred to in Articles 23 and 24 of that regulation. Specifically, in Case C-228/21, the take back concerns a person who had previously lodged an application for international protection in another Member State, where it is under examination, which is the scenario referred to in Article 18(1)(b) of that regulation. Moreover, in Cases C-315/21 and C-328/21, the take back concerns persons who had each previously lodged an application for international protection in another Member State, where it has been rejected, which corresponds to the scenario referred to in Article 18(1)(d) of that regulation.

76 In addition, in Cases C-228/21 and C-315/21, the persons concerned each subsequently applied for asylum in Italy, while, in Case C-328/21, it is apparent from the request for a preliminary ruling that GE did not lodge an application for international protection in Italy but was illegally staying there. However, it is apparent from the file before the Court in that case that GE claims to have been treated as such only because the Ministry of the Interior did not take due account of his application for international protection, which will be a matter for the referring court to ascertain.

77 It is in that context of subsequent applications for international protection (Cases C-228/21 and C-315/21) and – subject to verification by the referring court – of an illegal stay subsequent to an application for international protection lodged in another Member State (Case C-328/21) that the Court is asked whether and to what extent the obligation to provide information laid down in Article 4 of the Dublin III Regulation and that laid down in Article 29(1) of the Eurodac Regulation are binding on the Member State.

78 When interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it forms part (see, to that effect, judgment of 7 November 2019, UNESA and Others, C-105/18 to C-113/18, EU:C:2019:935, paragraph 31 and the case-law cited).

79 First of all, as regards the wording of the provisions at issue and, in the first place, that of Article 4 of the Dublin III Regulation, it should be noted, first, that, according to Article 4(2), 'the information referred to in paragraph 1 shall be provided in writing' and that 'Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose'. Second, neither Article 4(1) nor its reference to Article 20(2) of that regulation makes a distinction according to whether the application for international protection to which those provisions relate is a first or subsequent application. In particular, the latter provision describes in general terms the moment when an application for international protection is deemed to have been lodged. It cannot therefore be understood as relating solely to a first application. Moreover, and as the Advocate General stated in point 75 of her Opinion, that interpretation may also be inferred from the final part of the second subparagraph of Article 23(2) of the Dublin III Regulation, which refers to Article 20(2) of that regulation as regards an application for international protection subsequent to a first application.

80 It follows from the foregoing that, according to the literal interpretation thereof, Article 4 of the Dublin III Regulation requires the common leaflet to be provided as soon as an application for international protection is lodged, regardless of whether or not it is a first application.

81 As regards, in the second place, Article 29 of the Eurodac Regulation, to which Question 2(b) in Case C-328/21 refers, it should be noted, first, that paragraph 1(b) of that article provides that 'a person covered by … Article 17(1)', that is to say, a third-country national or a stateless person found illegally staying within the territory of a Member State, 'shall be informed by the Member State of origin in writing … of … the purpose for which his or her data will be processed by Eurodac, including a description of the aims of [the Dublin III Regulation], in accordance with Article 4 thereof'.

82 Second, the second subparagraph of Article 29(2) of the Eurodac Regulation states that, 'in relation to a person covered by Article 17(1), the information referred to in paragraph 1 of this Article shall be provided no later than at the time when the data relating to that person are transmitted to the Central System'.

83 Third, Article 29(3) of the Eurodac Regulation provides that ‘a common leaflet, containing at least the information referred to in paragraph 1 of this Article and the information referred to in Article 4(1) of [the Dublin III Regulation] shall be drawn up in accordance with the procedure referred to in Article 44(2) of that Regulation’.

84 It follows that, according to the literal interpretation thereof, Article 29 of the Eurodac Regulation requires the common leaflet to be provided to any third-country national or stateless person found illegally staying in the territory of a Member State whose fingerprints are taken and transmitted to the central system, and this must take place no later than the time of transmission, irrespective of whether or not that person has previously lodged an application for international protection in another Member State.

85 Next, the literal interpretations of Article 4 of the Dublin III Regulation and of Article 29 of the Eurodac Regulation are borne out by the legislative context of those provisions.

86 As regards, in the first place, Article 4 of the Dublin III Regulation, that article appears in Chapter II, entitled ‘General principles and safeguards’, of that regulation. As the Advocate General observed in point 76 of her Opinion, the provisions of that chapter are intended to apply to all situations falling within the scope of the Dublin III Regulation, and therefore not solely to a specific situation, such as the lodging of an application for international protection for the first time.

87 It is apparent, moreover, from Article 16a(1) of Regulation No 1560/2003 that the common leaflet in Annex X to that regulation is intended to inform ‘all’ applicants for international protection of the provisions of the Dublin III Regulation and the Eurodac Regulation. That Annex X is divided into two parts, namely Part A and Part B. Part A of the annex contains the model common leaflet intended for all applicants for international protection, regardless of their situation. Part B of that annex contains the model common leaflet which is intended, moreover, to be given to the person concerned in all cases where the Member State considers that another Member State could be responsible for examining the asylum application, including, in the light of the general nature of the terms contained in the box and the related footnote in Part A, referred to in paragraph 32 above, where it is upon lodging a subsequent application for international protection that the Member State called upon to deal with that application considers that another Member State could be responsible for examining that application.

88 As regards, in the second place, Article 29 of the Eurodac Regulation, regard must be had to the fact that Article 1 of that regulation provides that the purpose of the Eurodac system is ‘to assist in determining which Member State is to be responsible pursuant to [the Dublin III Regulation] for examining an application for international protection lodged in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of [the Dublin III Regulation] under the conditions set out in this Regulation’.

89 In that regard, the purpose of Annex XIII to Regulation No 1560/2003, entitled ‘Information for third country nationals or stateless persons found illegally staying in a Member State, pursuant to Article 29(3) of [the Eurodac Regulation]’, is to inform the person concerned that the competent authorities of the Member State in which that person is found illegally staying may take his or her fingerprints, in accordance with the power conferred upon them under Article 17 of the Eurodac Regulation, which they must exercise when they consider it necessary to check whether that person has previously lodged an application for international protection in another Member State. Annex XIII contains a box and a related footnote, referred to in paragraph 34 above, in which it is stated, for the attention of the person found illegally staying, that, if the competent authorities consider that that person might have lodged such an application in another Member State which could be responsible for examining it, that person will receive more detailed information about the procedure that will follow and how it affects that person and his or her rights, that information being that foreseen under Part B of Annex X to Regulation No 1560/2003.

90 That normative context confirms that a third-country national or a stateless person found illegally staying in the territory of a Member State and whose fingerprints are taken and transmitted to the Central System by the competent authority of that Member State, pursuant to Article 17 of the Eurodac Regulation, with a view to checking whether an application for international protection has already been lodged in another Member State, must receive the common leaflet from the competent national authorities. It should be added that this must include both Part B of Annex X to Regulation No 1560/2003, relating to the situation where the competent authorities have reasons to believe that another Member State could be responsible for examining the application for international protection, and Part A of that annex, which sets out the bulk of the information relating to Eurodac, as is moreover reflected in the footnote in Part B of that annex, referred to in paragraph 33 above.

91 Finally, as regards the purpose of the obligation to provide information, the Italian Government and the Commission submit, in their observations, on the basis of the judgment of 2 April 2019, H. and R. (C-582/17 and C-583/17, EU:C:2019:280), that it falls within the context of determining the Member State responsible.

92 According to those interested parties, in the case of take back procedures under Articles 23 or 24 of the Dublin III Regulation – procedures which are applicable to the persons covered by Article 20(5) or Article 18(1)(b), (c) or (d) of that regulation – the procedure for determining the Member State responsible, in the situations covered by the latter provision, has already been concluded in a Member State or, in the situation covered by Article 20(5), has been discontinued or is still ongoing in a Member State which is required to complete that procedure. Thus, it is not for the requesting Member State, in the context of the take back procedure, to make a determination – namely that of the Member State responsible – which would fall to another Member State, regardless of whether or not it has been completed.

93 Accordingly, the Italian Government and the Commission take the view that the provision of the common leaflet, pursuant to the obligations to provide information laid down in Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation, does not serve any useful purpose in the context of a take back procedure, so far as concerns, at the very least, the question of determining the Member State responsible.

94 In that regard, however, it should be noted that the question of the determination of the Member State responsible is not necessarily definitively settled at the stage of the take back procedure.

95 It is true that the Court held, in essence, in paragraphs 67 to 80 of the judgment of 2 April 2019, H. and R. (C-582/17 and C-583/17, EU:C:2019:280), that, since responsibility for examining the application for international protection has already been established, it is no longer necessary to re-apply the rules governing the process for determining that responsibility, foremost among which are the criteria set out in Chapter III of the Dublin III Regulation.

96 However, the fact that it is not necessary to proceed to a fresh determination of the Member State responsible does not mean, as the Advocate General also noted, in essence, in point 81 of her Opinion, that the Member State which intends to lodge or has lodged a take back request may ignore information which an applicant would provide to it and which would be such as to prevent such a take back request and the subsequent transfer of that person to the requested Member State.

97 Indeed, evidence relating to the cessation of the responsibilities of the requested Member State pursuant to the provisions of Article 19 of the Dublin III Regulation (see, to that effect, judgment of 7 June 2016, Karim, C-155/15, EU:C:2016:410, paragraph 27), the failure to comply with the time limit for making a take back request under Article 23(3) of that regulation (see, by analogy, judgment of 26 July 2017, Mengesteab, C-670/16, EU:C:2017:587, paragraph 55), the failure by the requesting Member State to comply with the time limit for transfer under Article 29(2) of that regulation (see, to that effect, judgment of 25 October 2017, Shiri, C-201/16, EU:C:2017:805, paragraph 46), the existence of systemic flaws in the requested Member State referred to in the second subparagraph of Article 3(2) of that regulation (see, to that effect, judgment of 19 March 2019, Jawo, C-163/17, EU:C:2019:218, paragraphs 85 and 86), or even the existence, given the state of health of the person concerned, of a real and proven risk of inhuman or degrading treatment in the event of transfer to the requested Member State (see, to that effect, judgment of 16 February 2017, C.K. and Others, C-578/16 PPU, EU:C:2017:127, paragraph 96) may ultimately alter the determination of the Member State responsible.

98 Moreover, the Court has found that a Member State cannot, in accordance with the principle of sincere cooperation, properly make a take back request, in a situation covered by Article 20(5) of the Dublin III Regulation, when the person concerned has provided it with information clearly establishing that that Member State must be regarded as the Member State responsible for examining the application for international protection pursuant to the criteria for determining responsibility set out in Articles 8 to 10 of that regulation. In such a situation, it is, on the contrary, for that Member State to accept its own responsibility (judgment of 2 April 2019, H. and R., C-582/17 and C-583/17, EU:C:2019:280, paragraph 83).

99 Last, Article 7(3) of the Dublin III Regulation expressly provides that 'in view of the application of the criteria referred to in Articles 8, 10 and 16, Member States shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant, on condition that such evidence is produced before another Member State accepts the request to take charge or take back the person concerned, pursuant to Articles 22 and 25 respectively, and that the previous applications for international protection of the applicant have not yet been the subject of a first decision regarding the substance'.

100 It follows from paragraphs 96 to 99 above that, contrary to the submissions of the Italian Government and the Commission, the person concerned may put forward a number of considerations liable, in the situations covered by Article 18(1)(b), (c) or (d) of the Dublin III Regulation, to alter the determination of the Member State responsible previously made in another Member State or, in a situation covered by Article 20(5) of that regulation, to affect such a determination.

101 Consequently, the purpose of the provision of the common leaflet, the aim of which is to provide the person concerned with information relating to the application of the Dublin III Regulation and his or her rights in the context of the determination of the Member State responsible, supports, in turn, the interpretations of Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation derived from the wording of those provisions and set out in paragraphs 80 and 84 above.

102 It follows from all the foregoing considerations that Article 4 of the Dublin III Regulation and Article 29 of the Eurodac Regulation must be interpreted as meaning that the obligation to provide the information referred to therein, in particular the common leaflet, applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation.

The personal interview (Article 5 of the Dublin III Regulation)

103 It follows from Article 5(1) of the Dublin III Regulation that, in order to facilitate the process of determining the Member State responsible, the determining Member State is to conduct a personal interview with the applicant and that that interview is also to allow the proper understanding of the information supplied to the applicant in accordance with Article 4 of that regulation.

104 In those circumstances, the considerations relating to the obligation to provide information, set out in paragraphs 96 to 100 above, are also relevant as regards the personal interview under Article 5 of the Dublin III Regulation.

105 While the purpose of the common leaflet is to provide information to the person concerned about the application of the Dublin III Regulation, the personal interview serves to verify that that person understands the information provided to him or her in that leaflet and it represents a privileged opportunity, or even a guarantee, for that person to disclose to the competent authority information which could lead the Member State concerned to refrain from submitting a take back request to another Member State or even, as the case may be, to prevent that person's transfer.

106 It follows that, contrary to the submissions of the Italian Government and the Commission, Article 5 of the Dublin III Regulation must be interpreted as meaning that the obligation to hold the personal interview referred to therein applies in the context of a first application for international protection and a take charge procedure, under Article 20(1) and Article 21(1) of the Dublin III Regulation respectively, as well as in the context of a subsequent application for international protection and a situation, as that covered by Article 17(1) of the Eurodac Regulation, capable of giving rise to take back procedures under Article 23(1) and Article 24(1) of the Dublin III Regulation.

The consequences of the infringement of the right to information and of the right to a personal interview

107 As the Court has already held, the drafting of Article 27(1) of the Dublin III Regulation, which provides that a person who is the subject of a transfer decision has the right to an effective remedy against such a decision, makes no reference to any limitation of the arguments that may be raised when an applicant avails himself or herself of that remedy. The same applies to the drafting of Article 4(1)(d) of that regulation, concerning the information that must

be provided to the applicant by the competent authorities as to the possibility of challenging a transfer decision (judgment of 7 June 2016, Ghezelbash, C-63/15, EU:C:2016:409, paragraph 36).

108 The scope of that remedy is made clear in recital 19 of the Dublin III Regulation, which states that, in order to ensure that international law is respected, the effective remedy introduced by that regulation in respect of transfer decisions must cover (i) the examination of the application of the regulation and (ii) the examination of the legal and factual situation in the Member State to which the applicant is to be transferred (judgment of 15 April 2021, État belge (Circumstances subsequent to a transfer decision), C-194/19, EU:C:2021:270, paragraph 33 and the case-law cited).

109 In addition, it follows from the Court's case-law that in the light, in particular, of the general thrust of the developments that have taken place, as a result of the adoption of the Dublin III Regulation, in the system for determining the Member State responsible for examining an application for international protection made in one of the Member States, and of the objectives of that regulation, Article 27(1) of the regulation must be interpreted as meaning that the remedy which it provides against a transfer decision must be capable of relating both to observance of the rules attributing responsibility for examining an application for international protection and to the procedural safeguards laid down by that regulation (judgment of 15 April 2021, État belge (Circumstances subsequent to a transfer decision), C-194/19, EU:C:2021:270, paragraph 34 and the case-law cited).

110 The obligations to provide information laid down in Article 4 of the Dublin III Regulation and Article 29(1)(b) and (3) of the Eurodac Regulation as well as the personal interview under Article 5 of the Dublin III Regulation are procedural safeguards which must be afforded to the person concerned or who may be concerned, inter alia, by a take back procedure pursuant to Article 23(1) or Article 24(1) of the latter regulation. It follows that the remedy provided for in Article 27(1) of the Dublin III Regulation against a transfer decision must, in principle, be capable of relating to the infringement of the obligations contained in those provisions and, in particular, the failure to provide the common leaflet and the failure to conduct the personal interview.

111 As regards the consequences that may ensue from the infringement of one or other of those obligations, it should be noted that the Dublin III Regulation does not provide any details in that respect.

112 As for the Eurodac Regulation, although it determines, in Article 37, the liability of the Member States towards any person who, or Member State which, has suffered damage as a result of an unlawful processing operation or any act incompatible with that regulation, it does not provide any details as to the consequences which may ensue, for a transfer decision, from failure to comply with the obligation to provide information laid down in Article 29(1)(b) and (3) of that regulation and recalled in the box and the related footnote which are set out in Annex XIII to Regulation No 1560/2003, as has already been pointed out in paragraph 89 above.

113 In accordance with the Court's settled case-law, in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish procedural rules for actions intended to safeguard the rights of individuals, in accordance with the principle of procedural autonomy, on condition, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by EU law (principle of effectiveness) (judgment of 15 April 2021, État belge (Circumstances subsequent to a transfer decision), C-194/19, EU:C:2021:270, paragraph 42 and the case-law cited). The same applies inter alia to the legal consequences, with regard to a transfer decision, of the failure to comply with the obligation to provide information and/or the obligation to hold a personal interview (see, to that effect, judgment of 16 July 2020, Addis, C-517/17, EU:C:2020:579, paragraphs 56 and 57 and the case-law cited).

114 In the present case, however, it appears to follow from the orders for reference and from the wording of the questions referred to the Court for a preliminary ruling that the law of the Member State to which the referring courts belong does not, in itself, enable those legal consequences to be determined with certainty and that, by those questions, those courts are seeking specifically to ascertain how they are to penalise such infringements.

115 In those circumstances, it is necessary for the Court to determine what consequences ensue, in that respect, from the principle of effectiveness.

116 As regards, in the first place, the legal consequences that may ensue, with regard to that principle, from the absence of the personal interview provided for in Article 5 of the Dublin III Regulation, it is important, at the outset, to refer to the judgment of 16 July 2020, Addis (C-517/17, EU:C:2020:579), delivered in respect of a situation in which a third-country national, already a beneficiary of refugee status in one Member State, complained that the competent authority of another Member State in which he had lodged another application for international protection had failed to hear him before rejecting his asylum application as inadmissible under Article 33(2)(a) of the 'Procedures' Directive. By that judgment, the Court held that in the light of the principle of effectiveness Articles 14 and 34 of that directive must be interpreted as precluding national legislation under which failure to comply with the obligation to give an applicant for international protection the opportunity of a personal interview before the adoption of such a decision declaring the application to be inadmissible does not lead to that decision being annulled and the case being remitted to the determining authority, unless that legislation allows the applicant, in the appeal procedure against that decision, to set out in person all of his or her arguments against the decision in a hearing which complies with the applicable conditions and fundamental guarantees set out in Article 15 of that directive, and those arguments are not capable of altering that decision.

117 In that regard, the Court stressed, inter alia, in paragraph 70 of that judgment, that Articles 14, 15 and 34 of the 'Procedures' Directive, first, set out, in binding terms, the obligation on the Member States to give the applicant the opportunity of a personal interview as well as specific, detailed rules on how that interview is to be conducted and, second, seek to ensure that the applicant has been invited to provide, in cooperation with the authority responsible for that interview, all information that is relevant to the assessment of the admissibility and, as the case may be, the substance of the application for international protection, which gives that interview paramount importance in the procedure for examination of that application.

118 The Court added that, if there is no personal interview before the competent authority, it is only if such an interview is conducted before the court or tribunal hearing the appeal against the decision adopted by that authority declaring the application inadmissible and that interview is conducted in accordance with all of the conditions prescribed by the 'Procedures' Directive that it is possible to guarantee the effectiveness of the right to be heard

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at that subsequent stage of the procedure (judgment of 16 July 2020, Addis, C-517/17, EU:C:2020:579, paragraph 71).

119 It should be noted that the consequences ensuing from the application of Article 33(2)(a) of the 'Procedures' Directive, namely the inadmissibility of the application for international protection lodged in a Member State by a person who is already a beneficiary of international protection granted by a first Member State and his or her return to the first Member State, are no more serious than those ensuing from the application of Article 23(1) and Article 24(1) of the Dublin III Regulation, which expose persons without international protection to take back.

120 More specifically, the situation referred to in Article 33(2)(a) of the 'Procedures' Directive is even, a priori, less serious in terms of its consequences for the person concerned than the situation, referred to in Article 18(1)(d) of the Dublin III Regulation, in which the take back request concerns a person whose application for international protection has been rejected by the requested Member State. In the latter case, the person concerned by the take back does not, like the person whose asylum application is inadmissible, face being sent back to a Member State in which that person is already a beneficiary of international protection, but faces removal by the requested Member State to his or her country of origin.

121 In addition, and as the Advocate General noted, in essence, in points 134 to 136 of her Opinion, both the decision declaring the application for international protection to be inadmissible, taken on the basis of Article 33(2)(a) of the 'Procedures' Directive, and the transfer decision implementing the take back, referred to in Articles 23 and 24 of the Dublin III Regulation, require that the person concerned should not run the risk of Article 4 of the Charter being infringed, which, in both cases, can be checked in the personal interview. The personal interview also allows the presence of family members, relatives or any other family relations of the applicant on the territory of the requesting Member State to be noted. Moreover, it makes it possible to ensure that a third-country national or a stateless person is not deemed to be illegally staying while he or she was intending to lodge an application for international protection.

122 Lastly, it should be noted that, like the interview under Article 14 of the 'Procedures' Directive, the obligation to conduct the personal interview under Article 5 of the Dublin III Regulation may be derogated from only in limited circumstances. In that respect, just as the personal interview on the substance of the asylum application may be omitted, as follows from Article 14(2)(a) of the 'Procedures' Directive, where the authority responsible is able to take a positive decision with regard to refugee status on the basis of evidence available, so the combined provisions of Article 5(2)(b) and (3) of the Dublin III Regulation require, in the interests of the person concerned by a possible take back, that the personal interview under Article 5 of that regulation be held in all cases where the competent authority might adopt a transfer decision contrary to the wishes of the person concerned.

123 In those circumstances, the case-law arising from the judgment of 16 July 2020, Addis (C-517/17, EU:C:2020:579), as regards the consequences which ensue when the obligation to conduct a personal interview is infringed in the context of a decision rejecting an application for international protection on the basis of Article 33(2)(a) of the 'Procedures' Directive, can be applied in the context of the take back procedures implemented pursuant to Article 23(1) and Article 24(1) of the Dublin III Regulation.

124 It follows that, without prejudice to Article 5(2) of the Dublin III Regulation, the transfer decision must, following an appeal brought against that decision under Article 27 of that regulation calling into question the absence of a personal interview provided for in that Article 5, be annulled unless the national legislation allows the person concerned, in the context of that appeal, to set out in person all of his or her arguments against that decision in a hearing which complies with the conditions and safeguards laid down in Article 5, and those arguments are not capable of altering that decision.

125 In the second place, where the personal interview under Article 5 of the Dublin III Regulation, whose paramount importance and associated procedural safeguards have previously been pointed out, has indeed taken place but the common leaflet to be provided pursuant to the obligation to provide information under Article 4 of that regulation or Article 29(1)(b) of the Eurodac Regulation was not provided before that interview took place, it is necessary, in order to satisfy the requirements arising from the principle of effectiveness, to ascertain whether, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, judgment of 10 September 2013, G. and R., C-383/13 PPU, EU:C:2013:533, paragraph 38 and the case-law cited).

126 The role of the national court in the context of an infringement of the obligation to provide information must therefore consist in ascertaining, in the light of the factual and legal circumstances of the case, whether the infringement, notwithstanding the fact that the personal interview has taken place, actually deprived the party relying thereon of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different (see, to that effect, judgment of 10 September 2013, G. and R., C-383/13 PPU, EU:C:2013:533, paragraph 44).

127 In the light of the foregoing, it must be held, as regards the obligation to provide information, that EU law, in particular Articles 4 and 27 of the Dublin III Regulation and Article 29(1)(b) of the Eurodac Regulation, must be interpreted as meaning that, where the personal interview under Article 5 of the Dublin III Regulation has taken place but the common leaflet which must be provided to the person concerned pursuant to the obligation to provide information laid down in Article 4 of the Dublin III Regulation or in Article 29(1)(b) of the Eurodac Regulation has not been provided, the national court responsible for assessing the lawfulness of the transfer decision may order that that decision be annulled only if it considers, in the light of the factual and legal circumstances of the case, that the failure to provide the common leaflet, notwithstanding the fact that the personal interview has taken place, actually deprived that person of the possibility of putting forward his or her arguments, to the extent that the outcome of the administrative procedure in respect of that person could have been different.

iwettqu r-rimedju ta' appell jew reviżjoni tad-deċiżjoni dwar l-ażil iridu jagħtu lil ħarsien sħiħ, kemm fil-kelma kif ukoll fis-sustanza, tal-artikoli 4 u 5 tar-Regolament. Juru wkoll li t-treġġiegħ lura taħt ir-Regolament Dublin III jista' jiġi impedut fil-każ fejn dawn id-disposizzjonijiet ma jkunux ġew imwetqa b'mod sħiħ skont kif imsemmi fl-istess Regolament : kemm jekk dan in-nuqqas ikun sar mill-awtoritajiet tal-Istat Membru li fih tkun saret l-ewwel talba għall-ażil kif ukoll jekk dan in-nuqqas isir mill-awtoritajiet tal-Istat Membru suċċessiv. Bil-konsegwenza li n-nuqqas ta' adeżjoni stretta ma dawn l-obbligi tista' twassal, fiċ-ċirkostanzi msemmija fl-istess ruling, għall-annullament tad-deċiżjoni ta' trasferiment.

21. Il-pern tal-kwistjoni mresqa bir-rikors promotur f'dan il-każ hija preċiżament li t-talba għall-ażil magħmula quddiem l-awtoritajiet Maltin, u allura l-Istat Membru suċċessiv, ma kienetx issegwi d-disposizzjonijiet tal-artikoli 4 u 5 (u 17) tar-Regolament Dublin III minħabba "systemic flaws" fil-proċedura adottata u minħabba li ma dawk l-awtoritajiet ma qiesux sewwa s-sustanza tat-talba tiegħu; u allura din il-preliminary ruling hija rilevanti ħafna għal dan il-każ – anke f'dak li għandu x'jaqsam mat-talba magħmula bir-rikors tal-15 ta' Diċembru 2023 in kwantu turi l-QĠUE kienet lesta wkoll tikkonsidra l-possibilita li trasferimenti ta' persuna rikjedenti l-ażil fejn il-proċeduri rigward l-istħarriġ tat-talbiet għall-ażil ma jkunux ġew segwiti sew kemm mill-Istat Membri responsabbli kif ukoll mill-Istat Membru suċċessiv jiġu miċħuda.

22. Verament li l-proċeduri kostituzzjonali istitwiti mir-rikorrent bir-rikors promotur ma humiex xi forma ta' appell ulterjuri mid-deċiżjoni tat-Tribunal tal-Appelli għall-Protezzjoni Internazzjonali. Tali appell mhux permess bil-Liġi. Iżda l-proċeduri kostituzzjonali istitwiti bir-rikors promotur jistħarrġu kemm il-proċeduri rilevanti ċitati mir-rikorrent kemm fuq livell normativ kif ukoll fuq dak prattiku, kienu konformi ma diversi disposizzjonijiet li jippreskrivu l-jeddijiet tal-bniedem fil-Kostituzzjoni ta' Malta u fil-Konvenzjoni Ewropea.

23. Il-proċeduri t'indoli kostituzzjonali huma meqjusa separati u distinti minn proċessi ġuridiċi jew amministrattivi partikolari li jkunu stabbiliti b'liġi, għalkemm jaf ikollhom impatt dirett fuq l-eventwali riżultanzi. Per eżempju, jekk persuna tkun suġġetta għal proċeduri ġudizzjarji kriminali quddiem il-qrati ta' ġustizzja kriminali, ir-rimedji ta' indoli kostituzzjonali ma humiex meqjusa mill-Kodiċi Kriminali

bħala parti mill-proċedura penali ordinarja li tikkostitwixxi l-eżerċizzju tal-azzjoni penali. Skond il-proċedura kriminali, l-azzjoni penali tiġi eżerċitata quddiem il-Qrati ta' Ġustizzja Kriminali tal-ewwel grad – Qorti tal-Maġistrati jew Qorti Kriminali – u fejn ikun il-każ, quddiem il-Qorti tat-tieni grad, ossija l-Qorti tal-Appell Kriminali. Għalkemm bosta drabi proċeduri t'indoli kostituzzjonali jaf ikollhom impatt fuq il-bidu, tmexxija jew l-eżitu ta' proċeduri kriminali, ma jistax jingħad li l-proċeduri kostituzzjonali huma parti mill-istess proċedura penali.

24. Iżda hemm istanzi proċedurali penali partikolari fejn il-liġi stess – bħal fil-każ tal-estradizzjonijiet u l-eżekuzzjoni ta' mandati t'arresti Ewropej – tinkorpora fiha l-possibilita tal-eżerċizzju tar-rimedju kostituzzjonali bħala parti minn dik il-proċedura penali partikolari b'mod li persuna ma tiġix estradita jew ċeduta lejn Stat ieħor jekk mhux wara li jkunu mitmuma l-proċeduri kemm t'indoli penali daqskemm dawk t'indoli kostituzzjonali – jekk u meta l-estradat jirrikorri għalihom. Hekk per eżempju l-artikolu 16 tal-Kapitolu 276 tal-Liġijiet ta' Malta jgħid li:

> 16. Meta persuna tintbagħat f'kustodja skont l-artikolu 15, il-qorti għandha, barra milli tgħarrafha li ma tkunx se titreġġa' lura qabel ma jgħaddu ħmistax-il jum mid-data tal-ordni ta' kustodja uli, ħlief fil-każ li tinbagħat taħt kustodja biex tistenna li titreġġa' lura taħt id-disposizzjonijiet tal-artikolu 15(5), hi tista' tappella lill-Qorti tal-Appell Kriminali, tgħarrafha wkoll illi, jekk jidhrilha li xi waħda mid-disposizzjonijiet tal-artikolu 10(1) u (2) tkun ġiet miksura jew li xi disposizzjoni tal-Kostituzzjoni ta' Malta jew tal-Att dwar il-Konvenzjoni Ewropea hija, tkun ġiet jew x'aktarx tkun se tiġi miksura dwar il-persuna tagħha hekk li tkun ġustifikata r-revoka, l-annullament jew il-modifika tal-ordni ta' kustodja tal-qorti, hija għandha jedd li titlob rimedju skont id-disposizzjonijiet tal-artikolu 46 tal-imsemmija Kostituzzjoni jew tal-Att dwar il-Konvenzjoni Ewropea, skont il-każ.

25. Disposizzjoni simili wieħed isibha wkoll fir-regolament 32 tal-Avviż Legali 320 tal-2004 regolanti l-Mandat tal-Arrest Ewropew fejn jingħad li :

> 32.Id-dispożizzjonijiet tal-artikoli 18 u 19, it-tnejn inklużi,tal-Att rilevanti għandhom ikunu japplikaw għal appelli li jsiruminn persuna li tinżamm taħt kustodja u għal appelli mill-AvukatĠenerali skond il-każ u għal rikors għal rimedju fil-Qorti Kostituzzjonali taħt l-artikolu 46 tal-Kostituzzjoni.

26. Dan allura jfisser li fejn il-Leġislatur ried li proċedura ordinarja speċjali tinkludi fiha l-possibilita ta' rikors t'indoli kostituzzjonali biex titqies kompluta, huwa għamar dan b'disposizzjoni ta' liġi.

27. Issa f'dan ir-rikors, l-argument imressaq quddiem din il-Qorti huwa marbut mar-rimedju msemmi mill-artikolu 27(3) u dak previst fl-artikolu 29(1) tar-Regolament Dublin III, moqrija wkoll mar-regolament 16 tal-Avviż Legali 416 tal-2015: u allura kemm fid-dawl tal-fatt li l-proċedura stabbilita mill-Liġi għad-determinazzjoni ta' applikazzjoni għall-ażil skont kif kienet ġiet mistħarrġa u deċiża kemm mill-Aġenzija għall-Protezzjoni Internazzjonali kif ukoll quddiem it-Tribunal tal-Appelli għall-Protezzjoni Internazzjonali, jista' jingħad li s-sospensjoni tat-trasferiment tal-persuna rikjedenti ażil, nonche d-dritt tagħha li tibqa' fit-territorju tal-istat fejn dik il-persuna tkun qed tagħmel it-talba għall-ażil u pendenti d-deċiżjoni finali fuq dik it-talba, kienet tibqa' tapplika anke pendenti l-kors ta' proċeduri kostituzzjonali quddiem din il-Qorti meta dawn ikunu ġew istitwiti minn dik il-persuna.

28. L-intimati jargumentaw li dan id-dritt tas-sospensjoni u permanenza ma jeżistix in kwantu l-proċeduri marbuta mal-applikazzjoni għall-ażil ġew konklużi bid-deċiżjoni finali u inappellabbli tat-Tribunal. Mill-banda l-oħra ir-rikorrent jisħaq li s-sospensjoni tat-trasferiment tiegħu lejn l-Istat Membru responsabbli u l-permanenza tiegħu f'Malta kien dritt tiegħu li joħroġ mill-istess liġi Maltija regolanti l-proċeduri tal-ażil. In sostenn għall-dan l-argument, ir-rikorrent jistrieħ fuq interpretazzjoni tal-liġijiet rilevanti magħmula mill-Prim'Awla tal-Qorti Ċivili fid-digriet tagħha tat-18 t'Ottubru 2023.[5]

29. Dik il-Qorti osservat li t-trasferiment tal-persuna applikanta lejn l-Istat Membru responsabbli fis-sensi tal-artikolu 29(1) tar-Regolament isir fi żmien sitt xhur, inter alia, mid-deċiżjoni finali wara appell jew reviżjoni tad-deċiżjoni dwar l-ażil in kwantu f'dak il-każ ikun hemm effett sospensiv skont l-artikolu 27(3) tar-Regolament Dublin III. Dik il-Qorti żiedet li ġaladarba wara li kien sar l-appell quddiem it-Tribunal ir-rikorrent kien għażel li jadixxi lil din il-Qorti b'talba msejsa fuq jeddijiet tal-bniedem, grazzi għall-mod kif il-Liġi Maltija kienet tippreskrivi r-rabta bejn dawn il-proċeduri u l-proċeduri ta' appell jew reviżjoni msemmija fil-Liġi speċjali ossija l-artikolu 7 tal-Kapitolu 420

[5] Mandat ta' Inibizzjoni bin-numru 1802/2023/1 deċiż mill-Prim'Awla tal-Qorti Ċivili presjeduta mill-Imħallef Doreen Clarke datat 18 t'Ottubru 2023.

tal-Liġijiet ta' Malta nonche r-regolament 16 tal-Avviż Legali 416 tal-2015, dik id-deċiżjoni tat-Tribunal ma setgħetx titqies li kienet id-deċiżjoni finali.

30. Minn dan allura kien jikkonsegwi li l-perjodu massimu ta' sitt xhur imsemmi fir-regolament 29(1) tar-Regolament Dublin III b'riferenza għal dak previst fir-regolament 27(3)(a) tal-istess Regolament kien għadu ma ddekorriex inkwantu kellu jitqies li kien għadu sospiż pendenti l-proċeduri ta' indoli kostituzzjonali. Dik il-Qorti kkonkludiet li in bażi għal dan ukoll, ir-responsabilita għall-istħarriġ tal-applikazzjoni tal-persuna rikjedenti l-ażil kienet għadha vestita fir-Repubblika tal-Awstrija.

31. Ir-raġunament ta' dik il-Qorti kien is-segwenti:

> Illi applikazzjonijiet għal protezzjoni internazzjonali huma regolati mhux biss mir-Regolament fuq imsemmi imma anke mill-Kapitolu 420 tal-Liġijiet ta' Malta.
>
> Illi ai termini ta' l-artikolu 7 tal-Kap 420
>
> (1) It-Tribunal għandu jkollu s-setg*ħa li jisma' u jiddeċ*iedi appelli kontra deċiżjoni tal-A*ġ*enzija għall-Protezzjoni Internazzjonali inkluż*i* l-appelli minn deċiżjonijiet għat-*trasferiment ta' pajjiż* terz3 minn Malta lejn Stat Membru ieħor skont id-dispożizzjonijiet tar-Regolament tal-Kunsill (KE) 604/2013 tas-*26 ta' Ġ*unju 2013 li jistabbilixxi l-kriterji u l-mekkaniżmi li jiddeterminaw liema jkun l-Istat Membru responsabbli biex isir l-eżami tal-applikazzjoni għal protezzjoni internazzjonali li tkun *ġ*iet ippreż*entata f'xi wieħ*ed mill-Istati Membri minn *ċittadin ta' pajjiż* terz u minn persuna apolida. ... ...
> (10) Minkejja d-*disposizzjonijiet ta' kull liġ*i oħra, **iżda mingħajr preġudizzju għall-artikolu 46 tal-*Kostituzzjoni ta' Malta u mingħ*ajr preġudizzju għad-disposizzjonijiet tal-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea**, id-deċizjoni tat-Tribunal tkun waħda finali u konkluživa u ma tkun *tista' tiġ*i kontestata jew appellata quddiem ebda qorti tal-*ġ*ustizzja, *ħ*lief taħt id-disposizzjonijiet tal-artikolu 7A.4
>
> Illi minn dawn id-dispożizzjonijiet huwa ċar li deċizjoni ta 'l-Aġenzija għat-trasferiment ta' applikant lejn pajjizi membru ta'l-Unjoni Ewropea, partikolarment f'każ ta' Dublin Closure, tista' tiġi appellat quddiem it-Tribunal mingħajr pero l-possibilita ta' appell ta' tieni istanza. Madanakollu huwa ċar ukoll li s-subartikolu (10) jissoġġetta il-finalita tad-deċiżjonijiet meħuda mit-Tribunal għar-rimedji kostituzzjonali li applikant jista' jfittex b'referenza għad-deċizjoni li ttieħdet fil-konfront tiegħu, il-mod kif ittieħdet dik id-deċizzjoni u/jew l-effetti ta' dik l-istess deċizjoni.

Illi għalhekk jekk applikant jagħżel li jfittex rimedju kostituzzjonali d-deċizjoni meħuda mit-Tribunal ma tistax titqies finali u konklussiva qabel ma jiġu definittivament deċizi il-proċeduri kostituzzjonali.

Illi skond l-artikolu 29(1) tar-Regolament

It-trasferiment tal-applikant jew persuna oħra kif imsemmi fil-punti (c) jew (d) tal-Artikolu 18(1) mill-Istat Membru rikjedenti lejn l-Istat Membru responsabbli, **għandu jkun eżegwit skont id-dritt nazzjonali tal-Istat Membru rikjedenti**, wara konsultazzjoni bejn l-Istati Membri kkonċernati, **mill-aktar fis li jkun prattikament possibbli**, u **l-aktar tard fi żmien sitt xhur mill-**aċċettazzjoni tat-talba minn Stat Membru ieħor biex jieħu inkarigu *ta' jew jieħu* lura l-persuna kkonċernata jew tad-**deċiżjoni finali wara appell jew reviżjoni fejn ikun hemm effett sospensiv skont l-Artikolu 27(3)5.**

Illi għalhekk ir-Regolament irid li trasferiment ta' applikant lejn l-Istat Membru Responsabbli għandu jiġi attwat mhux aktar tard minn sitt xhur minn meta l-Istat Membru responsabbli jaccetta t-talba għat trasferiment ta'l-applikant. Ir-Regolament jipprovdi għal eċċezzjoni f'każ ta' appell mid-deċizjoni ta'l-awtorita kompetenti b'mod li meta jsir appell il-perjodu massimu ta' sitt xhur li fih applikant jista jiġi trasferit jibda jiddekorri mid-data tad-deċizjoni finali **wara** dak l-appell jew reviżjoni. Din l-eċċezzjoni pero hija soġġettata għal kundizzjoni u cioe: irid ikun japplika l-effett sospensiv predispost f'l-artikolu 27(3) tar-Regolament.

Illi dan l-artikolu [27(3)] tar-Regolament jipprovdi li:

Għall-*iskopijiet ta' appelli kontra, jew reviżjonijiet ta', deċiżjonijiet ta'* trasferiment, l-Istati Membri għandhom jipprevedu fil-liġi nazzjonali tagħhom li:
(a) l-appell jew ir-reviżjoni tagħti lill-applikant id-dritt li *jibqa' fl-*Istat Membru kkonċernat sakemm jintlaħaq l-eżitu *ta'l-*appell jew ir-reviżjoni; jew

(b) it-trasferiment huwa sospiż awtomatikament u tali sospensjoni tiskadi wara *ċertu perijodu ta' ż*mien raġonevoli, *f'liema ż*mien qorti jew tribunal, wara skrutinju mill-qrib u rigoruż, tkun ħadet deċiżjoni dwar jekk għandux jingħata effett sospensiv lil appell jew reviżjoni; jew

(c) il-persuna kkonċernata jkollha l-*opportunità li titlob f'perijodu ta' ż*mien raġonevoli lil qorti jew tribunal biex jissospendi l-implimentazzjoni tad-deċiż*joni ta' trasferiment sakemm jintlaħ*aq l-eżitu tal-appell jew reviżjoni tiegħu/tagħha L-Istati Membri għandhom jiżguraw li jkun hemm rimedju effettiv billi jissospendu t-trasferiment sakemm tittieħed deċiżjoni rigward l-ewwel talba għal sospensjoni. Kwalunkwe deċiżjoni dwar jekk l-implimentazzjoni tad-deċiż*joni ta' trasferiment għ*andhiex tiġi sospiża għandha tittieħ*ed f'perijodu ta' ż*mien raġonevoli, filwaqt li tippermetti skrutinju mill-qrib u rigoruż tat-talba għal sospensjoni. Deċiżjoni li l-

*implimentazzjoni ta' deċiżjoni ta' trasferiment ma tiġ*ix sospiża għandha tiddikjara r-raġunijiet li fuqhom hija bbażata

Illi l-legislazzjoni domestika, permezz ta'l-artikolu 16 ta' l-Avviz Legali 416 tas-sena 2015 (SL420.07), provdiet għaċ-ċirkostanza imsemmija fis-subapargrafu (a) ta'l-artikolu 27 tar-Regolament6.

L-Avviz Legali 416 tas-sena 2015 fil-fatt jipprovdi li

(1) **L-applikanti għandhom jitħallew fuq it-territorju Malti, għall-iskop uniku tal-proċedura, sakemm l-Aġenzija għall-Protezzjoni Internazzjonali jieħu deċiżjoni**. Id-*dritt li jibqa' ma jintitolax l-*applikant għal *permess ta' residenza.*
(2) **Minkejja d-*disposizzjonijiet ta' xi liġ*i oħra kuntrarja**, u minbarra fejn applikazzjoni sussegwenti mhux sejra tiġi aktar eżaminata konformement mal-artikolu 7A tal-Att, jew meta applikant sejjer jintbagħat lura jew jiġi estradit kif xieraq lejn Stat Membru ieħor konformement mal-obbligi skont *Mandat Ewropew ta' Arrest jew xort'oħ*ra, jew lejn pajjiż terz jew lejn qrati jew tribunali kriminali internazzjonali, **applikant ma għandux jitneħħa minn Malta qabel ma l-applikazzjoni tiegħu tiġi finalment deċiża u dak l-applikant għandu jitħalla jidħ*ol jew jibqa' f'Malta sakemm tingħ*ata deċiżjoni finali dwar l-applikazzjoni tiegħu.7**

Illi minn dawn il-varji dispożizzjonijiet jirriżulta li, la darba skond l-Avviz Legali 416 tas-sena 2015 (u l-artikolu 27(3)(a) tar-Regolament) f'kaz ta' appell minn deċizjoni ta'l-Aġenzija għandu jkun hemm effett sospensiv, b'applikazzjoni ta' l-artikolu 29 tar-Regolament it-trasferiment ta'l-applikant għandu jiġi eżegwiet, skont id-dritt domestiku ta' Malta (l-Istat Rikjedenti) sa mhux aktar tard minn sitt xhur mid-deċiżjoni finali wara l-appell. Kif intqal aktar 'l fuq skond l-artikolu 7 tal-Kap 420 d-deċizjoni meħuda mit-Tribunal ma tistax titqies finali u konklussiva qabel ma jiġu definittivament deċizi il-proċeduri kostituzzjonali.

Illi f'dan is-sens esprimiet ruħha il-Qorti tal-Ġustizzja ta'l-Unjoni Ewropea fis-sentenza mgħotija fit-30 ta' Marzu 2023 fil-każ Staatssecretaris van Justitie en Veilighied (Kawza Numru c-556/21):

*19 F'dan ir-*rigward, filwaqt li mill-Artikolu 29(1) u (2) tar-Regolament Dublin III jsegwi li l-leġiżlatur tal-Unjoni Ewropea ried jiffavorixxi eżekuzzjoni rapida tad-deċiż*jonijiet ta' trasferiment, xorta jibqa' l-*fatt li huwa ma riedx jissagrifika l-protezzjoni *ġ*udizzjarja tal-applikanti għal protezzjoni internazzjonali għar-rekwiż*it ta' ħ*effa fl-ipproċessar tal-applikazzjoni tagħhom, u li huwa ppreveda, sabiex jiżgura din il-protezzjoni, li l-e*żekuzzjoni ta' dawn id-*deċiż*jonijiet tista', f'ċ*erti każijiet, tiġi sospiża ... ...
20 L-*Artikolu 27(3) ta' dan ir-*regolament jeżiġi għalhekk li l-Istati Membri joffru lill-persuni kkon*ċernati rimedju li jista' jwassal għ*as- sospensjoni tal-eżekuzzjoni tad-deċiż*joni ta' trasferiment meħ*uda fil-konfront tagħhom ... ...

21 Skont din id-dispożizzjoni, l-Istati Membri għandhom jipprevedu jew, l-ewwel, li r-rikors kontra d-deċiż*joni ta' trasferiment jagħ*ti lill-persuna kkonċernata d-*dritt li tibqa' fl*-Istat Membru li jkun adotta dik id-deċiżjoni sakemm tingħata deċiżjoni dwar ir-rikors tagħha jew, it-tieni, li, wara l-preżent*ata ta' rikors kontra d*-deċiż*joni ta' trasferiment, it*-trasferiment jiġi sospiż awtomatikament għal terminu raġonevoli li matulu qorti tiddetermina jekk hemmx lok li jingħata effett sospensiv għal dak ir-rikors jew, it-tielet, li l-persuna kkonċernata jkollha l-possibbiltà li tippreżenta rikors intiż sabiex tinkiseb is-sospensjoni tal-eżekuzzjoni tad-deċiż*joni ta' trasferiment* sakemm tingħata deċiżjoni dwar ir-rikors kontra dik id-deċiżjoni ... ...

23 Fil-każ fejn is-sospensjoni tal-eżekuzzjoni tad-deċiż*joni ta' trasferiment* tirriżulta mill-applikazzjoni tal-Artikolu 27(3) jew (4) tar-Regolament Dublin III, mill-Artikolu 29(1) tiegħu jirriżulta li t-*terminu ta' trasferiment ma jibdiex* jiddekorri mill-aċċettazzjoni tat-talba għal teħid tal-inkarigu jew teħid lura, iż*da, b'deroga, mid*-deċiżjoni finali dwar ir-rikors ippreżentat kontra d-deċiż*joni ta' trasferiment* ... ...

24 Għalhekk, mill-Artikolu 29(1) tar-*Regolament Dublin III, u b'mod* partikolari mill-użu tal-*espressjoni "deċiżjoni finali", isegwi li l-*leġiżlatur tal-Unjoni ried li t-*terminu ta' trasferiment jibda jiddekorri biss minn meta d-*deċiżjoni dwar rikors kontra deċiż*joni ta' trasferiment ikun sar definittiv,* **wara li jkunu ntużaw ir-rimedji ġudizzjarji kollha previsti mill-ordinament ġuridiku tal-Istat Membru kkonċernat8**, bil-kundizzjoni li l-eżekuzzjoni tad-deċiż*joni ta' trasferiment tkun ġ*iet sospiża, skont l-Artikolu 27(3) jew (4) *ta' dan ir*-regolament.

Illi in vista tas-suespost u b'applikazzjoni tiegħu għall-każ in eżami, la darba r-rikorrenti fittex rimedju kostituzzjonali wara d-deċizjoni tat-Tribunal u allura fit-termini ta'l-artikolu 7 tal-Kap 420 id-deċizjoni tat-Tribunal ma tistax tiqies finali isegwi li l-perjodu massimu ta' sitt xhur li matulu għandu jiġi eżegwiet it-trafseriment għandu ma ddekorriex. Konsegentement isegwi ukoll li r-responsabbilta għall-applikant ma ġietx trasferieti lill-Istat Malti imma għadha vestieta f'Istat Awstrijak.

32. Din il-Qorti wkoll tqis din il-kwistjoni minn lenti simili. Qabel xejn l-artikolu 27 tar-Regolament Dublin III jipprovdi mhux biss għal rimedji, iżda jisħaq fuq li r-rimedji jridu jkunu **effettivi**. Dawn ir-rimedji effettivi jrid ikollhom is-sura ta' appell jew reviżjoni, fil-fatt u fil-liġi, quddiem qorti jew tribunal.

33. Il-Liġi Maltija għażlet li bħala regola, mid-deċiżjoni dwar l-ażil meħuda mill-Aġenzija għall-Protezzjoni Internazzjonali u minn deċiżjonijiet dwar trasferiment ta' persuna ġejja minn pajjiż terz[6]

[6] NB. It-test tal-artikolu 7 tal-Kapitolu 420 tal-Liġijiet ta' Malta jgħid : "inklużi l-appelli minn deċiżjonijiet għat-trasferiment ta' pajjiż terz minn Malta lejn Stat Membru ieħor skont id-disposizzjonijiet tar-Regolament tal-Kunsill (KE) 604/2013 tas-26 ta' Ġunju 2013...". Bid-dovut rigward, ma jistgħux jinstemgħu appelli minn deċiżjonijiet għat-trasferiment ta' pajjiż terz minn Malta in kwantu Malta ma

għandu jkun hemm appell quddiem it-Tribunal tal-Appell għall-Protezzjoni Internazzjonali.

34. Il-Leġislatur ried li meta jsir dan l-appell quddiem dan it-Tribunal, l-istess Tribunal kellu jkollu s-setgħa li jagħmel eżami sħiħ u ex nunc fuq il-fatti u punti ta' liġi kollha marbuta mal-meritu tal-każijiet li quddiemu jkun qed isir appell dwarhom. B'hekk dan it-Tribunal ġie mogħni b'setgħat wiesa' ta' stħarriġ ta' fatt u ta' dritt fuq il-każ partikolari. Iżjed minn hekk, il-Leġislatur għamar ukoll li **minkejja d-disposizzjonijiet ta' kull liġi oħra**, id-deċiżjonijiet ta' dan it-Tribunal kellhom jitqiesu **li jkunu finali u konklussivi u d-deċiżjonijiet tiegħu ma jkunx suġġetti għal appell ulterjuri quddiem ebda qorti tal-ġustizzja** (ħlief fil-każijiet ta' applikazzjonijiet suċċessivi wara deċiżjoni finali fis-sensi tal-artikolu 7A ta' dik il-Liġi).

35. Li kieku l-Liġi waqfet hemm, allura ftit kien ikun hemm x'wieħed jista' jżid għajr li dak it-Tribunal kien mogħni bis-sovranita deċiżjonali inespunjabbli kemm fuq binarju fattwali daqskemm legali. Iżda f'dan il-każ il-Leġislatur ma waqafx hemm. Għalkemm f'nifs wieħed il-Leġislatur joħloq Tribunal sovran fid-deċiżjonijiet tiegħu ta' fatt u ta' dritt, fl-istess nifs huwa espliċitament jissoġġetta din il-ġurisdizzjoni sovrana għall-potenzjal ta' azzjoni quddiem il-ġurisdizzjoni tal-qorti b'kompetenza kostituzzjonali u konvenzjonali. Tant hu veru li wara l-frażi "**Minkejja d-disposizzjonijiet ta' kull liġi oħra**", il-Leġislatur ikkwalifika d-deċiżjoni sovrana ta' dak it-Tribunal billi żjid il-frażi "**iżda mingħajr preġudizzju għall-artikolu 46 tal-Kostituzzjoni ta' Malta u mingħajr preġudizzju għad-disposizzjonijiet tal-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea**".

36. Dan allura jfisser li għalkemm b'lokuzzjoni differenti, f'din id-disposizzjoni legali, u bħal ma għamel fil-qasam tal-estradizzjonijiet u mandati t'arresti Ewropej, il-Leġislatur irrikonoxxa l-proċedura t'indoli kostituzzjonali bħala parti mill-proċess ġudizzjarju marbut mad-determinazzjoni tal-proċedura tal-applikazzjoni għall-ażil.

37. L-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta jfisser neċessarjament li d-deċiżjonijiet tat-Tribunal huma finali f'dak li

għandhiex is-setgħa li tibgħat Stati terzi lejn Stati Membri oħra, iżda semmai **ċittadini jew persuni** ġejjin minn pajjiżi terzi. Huwa evidenti li l-iżball qiegħed fit-traduzzjoni in kwantu fil-verżjoni Ingliża ta' din il-Liġi, it-termini użati huma korretti.

għandu x'jaqsam mal-interpretazzjoni tal-fatti u tad-dritt, daqskemm huma finali d-deċiżjonijiet tal-Qorti tal-Appell Kriminali fil-każijiet ta' estradizzjoni jew mandat t'arrest Ewropew; iżda b'daqshekk ma jfissirx li fi ħdan l-istess proċedura ma jistgħux jiġu sollevati kwistjonijiet ta' indole kostituzzjonali jew konvenzjonali li jistgħu jolqtu dik id-deċiżjoni jew il-proċess tal-ażil jew deċiżjoni dwar it-trasferiment tal-persuna rikjedenti l-ażil; f'liema każ, jekk il-persuna rikjedenti ażil tagħżel li tipproċedi bi proċeduri kostituzzjonali, tali deċiżjoni tat-Tribunal tista' tiġi milquta mid-deċiżjoni tal-Qorti Ċivili f'sede kostituzzjonali li, fit-twettieq ta' din il-mansjoni kostituzzjonali, f'każ fejn l-ilment ikun fondat, tista' takkorda rimedji li jistgħu wkoll jimplikaw varjazzjoni tad-deċiżjoni marbuta mal-ażil jew it-trasferiment tal-persuna rikjedenti l-ażil mogħtija mit-Tribunal innifsu.

38. Dan allura jfisser illi r-reviżjoni li jitkellem dwaru l-artikolu 29(1) tar-Regolament Dublin III, fil-kuntest Malti, tinkludi mhux biss id-dritt t'appell imsemmi quddiem it-Tribunal iżda wkoll, fis-sensi tal-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta, id-dritt ta' reviżjoni quddiem qorti ta' ġustizzja ċivili b'setgħat kostituzzjonali f'dawk il-każijiet fejn persuna tkun qegħda, skont l-istess artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta teżerċita dak il-jedd ta' reviżjoni ta' dik id-deċiżjoni mill-lenti dwar jekk u kemm il-proċess sħiħ u d-deċiżjonijiet meħuda dwar l-ażil jew it-trasferiment tagħha jkunu konformi mal-prinċipji regolanti l-jeddijiet tal-bniedem skont il-proċedura prevista fl-artikolu 46 tal-Kostituzzjoni u l-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea; u fejn l-eżitu tagħhom jista' jinkludi, inter alia, l-varjazzjoni tad-deċiżjoni tat-Tribunal in parti jew tħassir b'mod sħiħ jekk ikun il-każ.

39. Għalhekk id-deċiżjoni dwar l-ażil li tkun ġiet appellata quddiem it-Tribunal titqies li tkun finali u konklussiva fil-każ fejn il-persuna rikjedenti l-ażil ma tkunx qajmet ilmenti ta' indoli kostituzzjonali; jew fejn ikunu saru tali proċeduri, dawn ma jknunx bidlu dik id-deċiżjoni. Fejn persuna rikjedenti l-ażil tkun għażlet li tipproċedi b'azzjoni t'indoli kostituzzjonali, grazzi għall-fatt li l-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta jagħmar u jagħraf li dik id-deċiżjoni tkun sovrana mingħajr preġudizzju għall-artikolu 46 tal-Kostituzzjoni ta' Malta u mingħajr preġudizzju għad-disposizzjonijiet tal-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea, id-deċiżjoni tat-Tribunal ma jistax jingħad li tkun "deċiżjoni finali" jew li l-proċedura tal-applikazzjoni dwar l-ażil tkun ġiet "finalment deċiża" in kwantu d-deċiżjoni tat-Tribunal tkun

tista' tinbidel jew tiġi mħasra bħala parti mir-rimedju fil-każ li jinstab ksur tal-jeddijiet tal-bniedem. B'hekk f'dan il-kuntest legali, pendenti d-determinazzjoni ta' dawk il-proċeduri kostituzzjonali, il-proċess marbut mal-applikazzjoni ma jistax jitqies li jkun ġie **finalment** deċiż. F'dak il-kuntest allura l-applikant ma għandux jitneħħa minn Malta peress li f'dak il-każ id-dritt tiegħu li jibqa' f'Malta jitnissel mir-regolament 16 tal-Avviż Legali 416 tal-2015 marbut ma dak stabbilit fir-Regolamenti 27(3) u 29(1) ta' Dublin III li jkunu awtomatikament applikabbli għalih grazzi għal mod kif inhuwa miktub l-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta spjegat iżjed il-fuq.

40. Ikun meta jkunu ġew mitmuma dawk il-proċeduri t'indoli kostituzzjonali li jkun verament jista' jingħad li l-proċedura dwar l-ażil tkun ġiet finalment deċiża, in kwantu ma jkun hemm ebda rimedju ieħor ulterjorment disponibbli. Huwa f'dan is-sens allura li r-regolament 16 tal-Avviż Legali 416 tas-sena 2015 għandu jiġi moqri u interpretat.

41. Fid-digriet tagħha tat-18 t'Ottubru 2023 il-Prim'Awla tal-Qorti Ċivili tiċċita l-kawża C-556/2021 fejn il-QĠUE qieset, b'riferenza għall-espressjoni "deċiżjoni finali" msemmija fir-Regolament 29(1) ta' Dublin III, li l-Leġislatur tal-UE ried li **t-terminu tat-trasferiment jibda jiddekorri biss minn meta d-deċiżjoni dwar ir-rikors kontra d-deċiżjoni ta trasferiment ikun sar definittiv wara li jkunu ntużaw ir-rimedji ġudizzjarji kollha previsti mill-ordinament ġuridiku tal-Istat Membru konċernat bil-kundizzjoni li l-eżekuzzjoni tad-deċiżjoni tat-trasferiment tkun ġiet sospiża skont ir-Regolament 27(3)(4) ta' Dublin III**.

42. Fis-sentenza C-556/21 tal-QĠUE, ir-riferimenti għal "appell" u għal "reviżjonijiet" li hemm fl-imsemmija dispożizzjoni għandhom jinftiehmu bħala li jagħmlu riferiment biss għar-rikorsi u għar-reviżjonijiet kontra deċiżjoni ta' trasferiment imsemmija fl-Artikolu 27(1) ta' dan ir-regolament. Dan l-aspett kien inkluż fl-appell magħmul f'dan il-każ.

43. Inoltre, f'dik is-sentenza ingħad ukoll:

> 30 Fl-aħħar, peress li r-Regolament Dublin III ma jinkludi, b'mod iżjed ġenerali, ebda regola dwar il-possibbiltà li jsir appell mid-

deċiżjoni li tiddeċiedi dwar ir-rikors eżerċitat kontra d-deċiżjoni ta' trasferiment jew li tirregola espliċitament is-sistema ta' eventwali appell, għandu jitqies li l-protezzjoni mogħtija mill-Artikolu 27(1) tal-imsemmi regolament, moqrija fid-dawl tal-Artikolu 18 u tal-Artikolu 47 tal-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea, hija limitata għall-eżistenza ta' rimedju ġudizzjarju u ma teżiġix l-istabbiliment ta' diversi livelli ta' ġurisdizzjoni (ara, f'dan is-sens, is-sentenza tas-26 ta' Settembru 2018, Staatssecretaris van Veiligheid en Justitie (Effett sospensiv tal-appell), C-180/17, EU:C:2018:775, punt 33).

31 Fid-dawl tal-kunsiderazzjonijiet preċedenti, u fl-assenza ta' leġiżlazzjoni tal-Unjoni fil-qasam, skont il-prinċipju tal-awtonomija proċedurali huwa għalhekk għall-ordinament ġuridiku intern ta' kull Stat Membru li jiddeċiedi dwar l-istabbiliment eventwali tat-tieni livell ta' ġurisdizzjoni kontra sentenza li tiddeċiedi dwar rikors li jirrigwarda deċiżjoni ta' trasferiment u li jirregola, jekk ikun il-każ, il-modalitajiet proċedurali ta' dan it-tieni livell ta' ġurisdizzjoni, inkluż il-ħruġ eventwali ta' miżuri provviżorji, bil-kundizzjoni, madankollu, li dawn il-modalitajiet ma jkunux, fis-sitwazzjonijiet li jaqgħu taħt id-dritt tal-Unjoni, inqas favorevoli minn dawk f'sitwazzjonijiet simili suġġetti għad-dritt intern (prinċipju ta' ekwivalenza) u li dawn ma jagħmlux impossibbli fil-prattika jew eċċessivament diffiċli l-eżerċizzju tad-drittijiet mogħtija mid-dritt tal-Unjoni (prinċipju ta' effettività) (ara, f'dan is-sens, is-sentenzi tas-26 ta' Settembru 2018, Staatssecretaris van Veiligheid en Justitie (Effett sospensiv tal-appell), C-180/17, EU:C:2018:775, punti 34 u 35, kif ukoll tal-15 ta' April 2021, État belge (Elementi sussegwenti għad-deċiżjoni ta' trasferiment), C-194/19, EU:C:2021:270, punt 42).

32 F'dan il-kuntest, peress li, b'mod partikolari, mid-deċiżjoni tar-rinviju jsegwi li l-leġiżlazzjoni nazzjonali koperta minn din it-talba għal deċiżjoni preliminari hija applikabbli, fl-ordinament ġuridiku Olandiż, għall-proċeduri ta' reviżjoni kollha fid-dritt amministrattiv, tali leġiżlazzjoni tista' tipprevedi li l-qorti adita b'tali rikors tat-tieni livell tista' toħroġ, fuq it-talba tal-awtoritajiet kompetenti, miżuri provviżorji. Min-naħa l-oħra, din il-leġiżlazzjoni ma tistax tidderoga mill-Artikolu 29(1) tar-Regolament Dublin III billi tipprevedi li tali miżuri għandhom, lil hinn mill-każijiet imsemmija f'din id-dispożizzjoni, l-effett li jipposponu minn meta jibda jiddekorri t-terminu ta' trasferiment u għalhekk jipposponi l-iskadenza tiegħu.

33 Issa, bħalma jsegwi mill-punti 23 u 24 ta' din is-sentenza, mill-Artikolu 29(1) tar-Regolament Dublin III jsegwi li t-terminu ta' trasferiment jista' jiddekorri mid-deċiżjoni finali dwar ir-rikors

ippreżentat kontra d-deċiżjoni ta' trasferiment biss sakemm l-eżekuzzjoni ta' din tal-aħħar tkun ġiet sospiża matul l-eżami tar-rikors fl-ewwel livell, skont l-Artikolu 27(3) jew (4) ta' dan ir-regolament.

34 Minn dan isegwi li miżura provviżorja li għandha bħala effett li tissospendi t-terminu ta' trasferiment sakemm tingħata deċiżjoni dwar rikors fit-tieni livell tista' tiġi adottata biss meta l-eżekuzzjoni tad-deċiżjoni ta' trasferiment tkun ġiet sospiża sakemm tingħata deċiżjoni dwar ir-rikors tal-ewwel livell, skont dawn id-dispożizzjonijiet tal-aħħar.

35 F'tali sitwazzjoni, minn naħa, l-estensjoni tal-posponiment tat-terminu ta' trasferiment sakemm tingħata deċiżjoni dwar ir-rikors tat-tieni livell tippermetti li jiġu żgurati opportunitajiet ugwali għall-partijiet u l-effettività tal-proċeduri ta' appell, billi jiġi żgurat li dan it-terminu ma jiskadix minkejja li l-eżekuzzjoni tad-deċiżjoni ta' trasferiment tkun saret impossibbli bil-preżentata ta' rikors kontra dik id-deċiżjoni.

36 Min-naħa l-oħra, l-għażla li tiġi suġġetta għall-adozzjoni ta' miżura provviżorja l-estensjoni, fil-kuntest ta' rikors tat-tieni livell, tal-effett sospensiv tar-rikors tal-ewwel livell kontra d-deċiżjoni ta' trasferiment dwar meta jibda jiddekorri t-terminu ta' trasferiment tippermetti li jiġi evitat li l-preżentata ta' rikors tat-tieni livell kontra sentenza li tannulla deċiżjoni ta' trasferiment twassal, b'mod sistematiku, anki meta ma jidhirx raġonevoli li dan ir-rikors jista' jirnexxi, għal posponiment ta' meta jibda jiddekorri dan it-terminu, li jista' jdewwem l-eżami tat-talba għal protezzjoni internazzjonali tal-persuna kkonċernata.

37 Tali regola hija, għaldaqstant, ta' natura li tiffavorixxi t-twettiq tal-għanijiet tal-imsemmi regolament intiżi, bħalma jirriżulta mill-premessi 4 u 5 tiegħu, sabiex jiġi stabbilit metodu ċar u operazzjonali, ibbażat fuq kriterji oġġettivi u ġusti, kemm għall-Istati Membru kif ukoll għall-persuni kkonċernati, sabiex jiġi ddeterminat b'mod rapidu l-Istat Membru responsabbli għall-eżami ta' applikazzjoni għal protezzjoni internazzjonali, sabiex jiġi żgurat aċċess effettiv għall-proċeduri ta' għoti ta' tali protezzjoni u sabiex ma jiġix kompromess l-għan ta' ħeffa fl-ipproċessar tal-applikazzjonijiet għal protezzjoni internazzjonali (ara, f'dan is-sens, is-sentenzi tad-19 ta' Marzu 2019, Jawo, C-163/17, EU:C:2019:218, punt 58, u tat-22 ta' Settembru 2022, Bundesrepublik Deutschland (Sospensjoni amministrattiva tad-deċiżjoni ta' trasferiment), C-245/21 u C-248/21, EU:C:2022:709, punt 56).

38 Għalhekk, din ir-regola ssaħħaħ l-applikazzjoni tat-termini imperattivi li permezz tagħhom il-leġiżlatur tal-Unjoni pprovda

qafas għall-proċeduri biex jieħu inkarigu ta' jew jieħu lura l-persuna kkonċernata. Dawn it-termini jikkontribwixxi, b'mod determinati, għat-twettiq tal-għan ta' ħeffa fl-ipproċessar tal-applikazzjonijiet għal protezzjoni internazzjonali, billi jiġi żgurat li l-imsemmija proċeduri jiġu implimentati mingħajr dewmien inġustifikat, u juru l-importanza partikolari li dan il-leġiżlatur ta għad-determinazzjoni rapida tal-Istat Membri responsabbli għall-eżami ta' applikazzjoni għal protezzjoni internazzjonali kif ukoll tal-fatt li, fid-dawl tal-għan li jiġi żgurat aċċess effettiv għall-proċeduri ta' għoti ta' protezzjoni internazzjonali u li dan l-għan ta' ħeffa ma jiġix kompromess, huwa importanti li tali applikazzjonijiet jkunu, jekk ikun il-każ, eżaminati minn Stat Membru li ma huwiex dak indikat bħala responsabbli skont il-kriterji stipulati fil-Kapitolu III ta' dan ir-regolament (ara, f'dan is-sens, is-sentenza tat-13 ta' Novembru 2018, X u X, C-47/17 u C-48/17, EU:C:2018:900, punti 69 u 70).

39 Min-naħa l-oħra, meta, bħalma jidher li huwa l-każ fit-tilwimiet fil-kawża prinċipali, u bla ħsara għall-verifiki li huma l-kompitu tal-qorti tar-rinviju, l-eżekuzzjoni tad-deċiżjoni ta' trasferiment ma tkunx ġiet sospiża sakemm ingħatat deċiżjoni dwar ir-rikors fl-ewwel livell, il-possibbiltà li tintalab, fil-kuntest ta' rikors tat-tieni livell, miżura provviżorja bħal dik inkwistjoni fil-kawża prinċipali tkun tippermetti, fil-fatt, lill-awtoritajiet kompetenti, li la kienu qiesu bħala utli li jużaw il-possibbiltà li joffrilhom l-Artikolu 27(4) tar-Regolament Dublin III, sabiex tiġi żgurata l-protezzjoni ġudizzjarja effettiva tal-persuni kkonċernati, u lanqas eżegwixxew id-deċiżjoni ta' trasferiment matul l-eżami ta' dak ir-rikors, li jipposponu meta jibda jiddekorri t-terminu ta' trasferiment, previst fl-Artikolu 29(1) ta' dan ir-regolament u b'dan il-mod li jevitaw li r-responsabbiltà għall-ipproċessar tal-applikazzjonijiet ta' dawn il-persuni tiġi ttrasferita lill-Istat Membru rikjedent, skont l-Artikolu 29(2) tal-imsemmi regolament u, b'dan il-mod, li jdewmu indebitament il-progress tal-proċedura ta' protezzjoni internazzjonali, billi jiġu ppreġudikati l-għanijiet ta' dan ir-regolament imfakkra fil-punti 37 u 38 ta' din is-sentenza.

44. Meta jitqiesu dawn il-Liġijiet kollha flimkien, fil-każ tal-Liġi Maltija, l-effett sospensiv tat-terminu tat-trasferiment jiġi li kien jopera mhux biss waqt it-trattazzjoni tal-appell quddiem it-Tribunal, iżda grazzi għall-fatt li l-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta jippreskrivi li d-deċiżjoni finali tat-Tribunal tkun mingħajr preġudizzju għar-rimedju kostituzzjonali li għalih l-applikant ikun jista' jirrikorri, l-istess artikolu allura jassoġġetta l-finalita u s-sovranita tad-deċiżjoni tat-Tribunal (nonche l-istħarriġ tal-proċedura kollha dwar l-ażil mill-

bidu sal-aħħar) għall-possibilita ta' rikors lejn il-proċedura stabbilita fl-artikolu 46 tal-Kostituzzjoni u l-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea u għall-eżitu tal-istess. B'mod għalhekk li fil-każ fejn jiġu istitwiti proċeduri t'indoli kostituzzjonali, dik is-sospensjoni tibqa' topera sal-mument li fih jiġu mitmuma definittivament dawk il-proċeduri: dment li dawn ikunu marbuta ma deċiżjoni dwar trasferiment.

45. Strettament allura, dan l-effett sospensiv tat-terminu de quo nonche l-jedd imsemmi ir-regolament 16 tal-Avviż Legali 416 tal-2015 dwar il-permanenza f'Malta tal-persuna rikjedenti l-ażil pendenti d-determinazzjoni finali tat-talba tal-ażil tagħha fil-gradi u livelli kollha previsti mill-ordinament ġuridiku ordinarju Malti, kienu l-effett u konsegwenza ta' jedd li kien japplika fil-konfront tar-rikorrent mingħajr il-ħtieġa li jsir dan ir-rikors u jingħata interim measure.

Deċide

Stante li

(a) ir-rikorrent istitwixxa proċeduri ta' indoli kostituzzjonali fis-sensi tal-artikolu 46 tal-Kostituzzjoni u l-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea u dan in segwitu għad-deċiżjoni tat-Tribunal tal-Appelli għall-Protezzjoni Internazzjonali li kkonferma d-deċiżjoni tal-Aġenzija għall-Protezzjoni Internazzjonali li l-każ tiegħu kien meqjus bħala Dublin Closure u li b'hekk kellu jiġi trasferit lejn ir-Repubblika tal-Awstrija ossija l-Istat Membru responsabbli mill-istħarriġ tat-talba għall-ażil oriġinali tiegħu,

(b) li dawn il-proċeduri kostituzzjonali jitrattaw direttament diversi aspetti tal-mod kif ġew imħadmin il-proċeduri li waslu għad-deċiżjonijiet li kienu jolqtu l-ażil tar-rikorrent kemm da parti tal-Aġenzija għall-Protezzjoni Internazzjonali kif ukoll da parti tat-Tribunal tal-Appelli għall-Protezzjoni Internazzjonali, inkluż dik tat-trasferiment tiegħu lejn l-Istat Membru responsabbli,

(c) u stante għalhekk li l-proċedura marbuta mal-applikazzjoni għall-ażil tiegħu għadha suġġetta għal stħarriġ ġudizzjarju ta' indoli kostituzzjonali in kwantu d-deċiżjoni tat-Tribunal hija bis-

saħħa tal-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta operattiva mingħajr preġudizzju għall-artikolu 46 tal-Kostituzzjoni u l-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea b'mod għalhekk li minkejja s-sovranita deċiżjonali konferita lil dak it-Tribunal fuq materja ta' fatti u dritt id-deċiżjoni tiegħu xorta tibqa' <u>bis-saħħa ta' dik il-Liġi stess</u> soġġetta għall-possibilita ta' iskrutinju tal-Qrati ta' ġurisdizzjoni kostituzzjonali li għandhom is-setgħa li fit-twettieq ta' dik il-mansjoni jagħmlu dawk l-ordnijiet, joħorġu dawk l-atti u jagħtu dawk id-direttivi li jqisu xierqa sabiex jitwettqu jew jiżguraw it-twettiq tal-jeddijiet tal-bniedem hemmhekk sanċiti,

Din il-Qorti tikkonkludi li fis-sensi tal-artikolu 7(10) tal-Kapitolu 420 tal-Liġijiet ta' Malta, ta l-artikolu 46 tal-Kostituzzjoni u tal-artikolu 4 tal-Att dwar il-Konvenzjoni Ewropea moqrija flimkien mal-artikoli 27(3)(a) u 29(1) tar-Regolament Dublin III nonche mar-regolament 16 tal-Avviż Legali 416 tal-2015, ir-rikorrent jiġi li kellu, u s'issa għad għandu, anke mingħajr il-ħtieġa ta' dan ir-rikors għal interim measure, id-dritt li jibqa' f'Malta pendenti d-determinazzjoni tal-proċeduri kostituzzjonali istitwiti minnu stante li t-talbiet hemmhekk magħmula minnu huma msejsa fuq dak dispost mill-artikolu 46(2) tal-Kostituzzjoni ta' Malta u tal-artikolu 4(2) tal-Kapitolu 319 tal-Liġijiet ta' Malta u jolqtu wkoll id-deċiżjoni ta' trasferiment tiegħu.

Tordna għalhekk li pendenti dawk il-proċeduri t'indoli kostituzzjonali li jġibu numru 321 tal-2023 AB ir-rikorrent Muktar Usman ikun jista' jibqa' f'Malta b'mod li t-trasferiment tiegħu lejn ir-Repubblika tal-Awstrija jibqa' sospiż sakemm jiġu mitmuma dawk il-proċeduri ġudizzjarji u dipendenti fuq l-eżitu tagħhom.

Tordna wkoll li l-Awtoritajiet Kompetenti tar-Repubblika tal-Awstrija jiġu infurmati b'din is-sentenza.

L-ispejjeż ta' dawn il-proċeduri jibqgħu bla taxxa bejn il-partijiet.

Aaron M. Bugeja
Imħallef